INDEX

	Page
I. "Inland Waters" are to be determined in accordance with the Convention on the Territorial Sea and the Contiguous Zone	1
A. The Convention defines the outer limits of inland waters	1
B. *United States* v. *California*, 381 U.S. 139, should control the present case	5
C. The Coast Guard regulation defining the "Inland Waters" in which shipping is to follow the Inland Rules of Navigation is irrelevant under the Submerged Lands Act	8
II. The coast and boundary lines should be drawn in accordance with the decree submitted by the United States	24
A. Sabine Pass to Tigre Point	24
B. Tigre Point to Shell Keys	29
C. Shell Keys to Point au Fer: Atchafalaya Bay	40
D. Point au Fer to Oyster Bayou	45
E. Oyster Bayou to Raccoon Point: Caillou Bay	45
F. Raccoon Point to Whiskey Island	52
G. Whiskey Island to Caminada Pass	52
H. Caminada Pass to Empire Canal: "Ascension Bay"	57
I. Empire Canal to Southwest Pass	59
J. Southwest Pass to Main Pass: Mississippi River Delta	59
1. East Bay	59
2. Garden Island and Redfish Bays	74
3. Southeast Pass to Main Pass	75
K. Main Pass to Ship Island: Chandeleur and Breton Sounds	76
III. The decree should include, with minor modifications, the incidental provisions submitted by the United States	79
Conclusion	79

319-467—68——1

CITATIONS

Cases: Page

Anna, The, 5 C. Rob. Adm. 373, 165 Eng. Rep. 809 .. 34, 44
Annapolis, The, Lush. 295, 167 Eng. Rep. 128 (Adm. 1861) .. 18
Chinese Exclusion Case, 130 U.S. 581 .. 64
Cook v. *United States*, 288 U.S. 102 .. 15, 18
Delaware, The, 161 U.S. 459 .. 27
Downes v. *Bidwell*, 182 U.S. 244 .. 65
Fisheries Case (*United Kingdom* v. *Norway*), I.C.J. Reports (1951) 116 .. 49, 71, 75
Hines v. *Davidowitz*, 312 U.S. 52 .. 64
Holmes v. *Jennison*, 14 Pet. 540 .. 64
Lattimer v. *Poteet*, 14 Pet. 4 .. 65
Louisiana v. *Mississippi*, 202 U.S. 1 .. 21, 22
Louisiana v. *Mississippi*, 384 U.S. 24 .. 24
Manchester v. *Massachusetts*, 139 U.S. 240 .. 32
United States v. *Belmont*, 301 U.S. 324 .. 64
United States v. *California*, 332 U.S. 19 .. 65
United States v. *California*, 375 U.S. 927 .. 70
United States v. *California*, 381 U.S. 139 .. 3, 5, 7, 23, 26, 45, 47, 70, 78
United States v. *California*, 382 U.S. 448 .. 5, 27
United States v. *Cerecedo Hermanos*, 209 U.S. 337 .. 15
United States v. *Curtiss-Wright Corp.*, 299 U.S. 304 .. 65
United States v. *Louisiana*, 339 U.S. 699 .. 23, 70
United States v. *Louisiana*, 340 U.S. 899 .. 70
United States v. *Louisiana*, 350 U.S. 812 .. 70
United States v. *Louisiana*, 354 U.S. 515 .. 70
United States v. *Louisiana*, 363 U.S. 1 .. 22, 23, 63, 69
United States v. *Louisiana*, 382 U.S. 288 .. 25, 77
United States v. *Pink*, 315 U.S. 203 .. 64

Treaties and statutes:

Convention on the Continental Shelf, 15 U.S.T. (Pt. 1) 471 .. 69
Article 5, 15 U.S.T. (Pt. 1) 473–474 .. 64
Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606 .. 1
Article 3, 15 U.S.T. (Pt. 2) 1608 .. 2, 29
Article 4 (French text), 15 U.S.T. (Pt. 2) 1616–1617 .. 28
Article 5, 15 U.S.T. (Pt. 2) 1609 .. 28
Article 7, 15 U.S.T. (Pt. 2) 1609 .. 29, 31, 40, 53

COPY BOUND C

Treaties and statutes—Continued

	Page
Convention on the Territorial Sea etc.—Continued	
Article 7 (French text), 15 U.S.T. (Pt. 2) 1617	28
Article 8, 15 U.S.T. (Pt. 2) 1609	28
Article 10, 15 U.S.T. (Pt. 2):	
1609	44
1610	34
Article 13, 15 U.S.T. (Pt. 2) 1610	29, 72
Article 13 (French text), 15 U.S.T. (Pt. 2) 1618	72
Act of August 4, 1790, sec. 31, 1 Stat. 145, 164	18
Act of July 18, 1866, Sec. 2, 14 Stat. 178, R.S. § 3059	18
Act of March 3, 1885, 23 Stat. 438	18, 27
Act of February 19, 1895	9, 23
Act of May 21, 1948, 62 Stat. 249	15
Act of October 11, 1951, 65 Stat. 406	15
Act of August 8, 1953, 67 Stat. 497	15
Act of September 24, 1963, 77 Stat. 194	15
Act of October 14, 1966, 80 Stat. 908, 16 U.S.C. 1901	18
Coastwise Loadline Act, 49 Stat. 888, as amended, 46 U.S.C. 88, *et seq*	20, 61
Federal Aviation Act of 1958, Sec. 601, 72 Stat. 775, 49 U.S.C. 1421	16
Louisiana Act 55 of 1938	66
Louisiana Act 51 of 1948	66
Louisiana Act 386 of 1948, La. Rev. Stats. 56:355	68
Louisiana Act 92 of 1956, Sec. 1	68
Louisiana Act 53 of 1958, Sec. 3	68
Louisiana Act 452 of 1962, Sec. 1	68
Louisiana Rev. Stats. (1967 pocket part) 56:495	68
Officers Competency Act of 1939, 53 Stat. 1049, as amended, 46 U.S.C. 224a	20, 61
Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. 1331–1343	69
49 Stat. 1544, 46 U.S.C. 367	20, 61
Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301–1315	70
Sec. 2, 67 Stat. 29, 43 U.S.C. 1301	23, 26
Tariff Act of 1922, Sec. 581, 42 Stat. 858, 979	18
Towline Act, 35 Stat. 428, as amended, 33 U.S.C. 152	20, 61
19 U.S.C. 1401(m)	18
19 U.S.C. 1581(a)	18
19 U.S.C. 1709(c)	8
33 U.S.C. 151	20

LOSE IN CENTER

Miscellaneous:

Acts of the Conference for the Codification of International Law: Minutes of the Committee, vol. 3, *Minutes of the Second Committee: Territorial Waters* (L.N. Doc. C.351(b).M.145(b).1930.V):
Page
P. 200 ... 44
P. 201 ... 32
Pp. 208–209 ... 73
Boggs, *Delimitation of Seaward Areas under National Jurisdiction* (1951), 45 American Journal of International Law 240 ... 34, 50, 70
Burdick, *Law of the American Constitution* (1922) p. 279 ... 65
Coast Guard, *Law Enforcement at Sea Relative to Smuggling* (1932) ... 10
33 C.F.R. §2.10–1 ... 14, 61
33 C.F.R. (1st ed., 1939) §302.100 ... 21
Commerce Department Circular No. 230 (2d ed., 1917) ... 21
Commerce Department Circular No. 236 (6th ed., 1935) ... 21
18 Fed. Reg. 2556 ... 11
18 Fed. Reg. 7893 ... 11
19 Fed. Reg. 1730 ... 69
32 Fed. Reg. 8763 ... 12, 17
32 Fed. Reg. 14775 ... 13
Gidel, *Droit International Public de la Mer* (1930–1934) 624–627 ... 61
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Hearings, S. Committee on Interior and Insular Affairs, S.J. Res. 13, 83d Cong., 1st sess., 926 ... 8
Hearings, Subcommittee on Maritime Affairs, H. Committee on Merchant Marine and Fisheries, H.R. 3670, 82d Cong., 1st sess., 33–34 ... 16
H. Rept. No. 215, 83d Cong., 1st sess., p. 4 ... 27
H.R. 4198, 83d Cong., 1st sess ... 27
Interim Agreement of October 12, 1956 ... 46
Juridical Regime of Historic Waters, Including Historic Bays (1962) U.N. Doc. A/CN.4/143 ... 3, 66

COPY BOUND C

Miscellaneous—Continued

1 *North Atlantic Coast Fisheries Arbitration* (S. Doc. No. 870, 61st Cong., 3d sess.), Award of the Tribunal (Cong. Doc. Ser. No. 5929): Page
P. 93 — 34
P. 98 — 35
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P. 15 — 31, 54
P. 16 — 25
P. 18 — 72
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P. 219–220 — 38
P. 221 — 31, 54, 56
P. 223 — 58
P. 225 — 32
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U.S.C. & G.S. Chart No. 1276 — 41
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P. 269 — 31, 54
P. 270 — 25
P. 271–272 — 72

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 9, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA, ET AL.

ON CROSS-MOTIONS FOR THE ENTRY OF A SUPPLEMENTAL DECREE AS TO THE STATE OF LOUISIANA (NO. 2)

REPLY BRIEF FOR THE UNITED STATES

I. "INLAND WATERS" ARE TO BE DETERMINED IN ACCORDANCE WITH THE CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE

A. THE CONVENTION DEFINES THE OUTER LIMITS OF INLAND WATERS

There is no substance to Louisiana's argument that the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606, only *enlarges* the permissible extent of a nation's inland waters, and leaves each nation free to continue to maintain any claims it may have had to inland waters of a greater extent than the Convention recognizes. La. Br. 82, 120, 194–195. Consequently, although we disagree with much of the argument, we see no reason to respond to Louisiana's examination (La. Br. 90–136) of the prin-

ciples advanced by the United States for the delimitation of inland waters prior to the Convention.

The Convention is plainly intended to be exclusive. Article 3 says, "Except where otherwise provided *in these articles*, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast * * *." 15 U.S.T. (Pt. 2) 1608; emphasis added. The only exceptions "otherwise provided" by the Convention are for straight baselines drawn pursuant to Article 4, bays to the extent specified by Article 7 (including historic bays), ports under Article 8, roadsteads under Article 9, islands under Article 10, low-tide elevations under Article 11, and mouths of rivers under Article 13. The Convention precludes all other baselines. The very purpose of the Convention was to bring order out of the chaos of conflicting national claims. That purpose would be largely defeated by construing the Convention as leaving every nation free to continue to insist on all points of difference beyond a certain minimum. Furthermore, if the international Convention had the extraordinary purpose of confirming some territorial claims without fixing a body of international law that cut in both directions, that purpose would surely have been mentioned somewhere. Not a word sustains Louisiana's interpretation.

As an indirect means of circumventing the limits imposed by the Convention Louisiana argues that any areas that would have been inland waters under principles formerly followed by the United States thereby became "historic bays" and consequently are

exempted from the general rules contained in Article 7 by the provision of paragraph 6 of that Article, that the general rules "shall not apply to so-called 'historic bays.'" La. Br. 185–186. The argument is unsound.

Historic bays "are bays over which a coastal nation has traditionally asserted and maintained dominion with the acquiescence of foreign nations." *United States* v. *California*, 381 U.S. 139, 172. It is not enough to show that control would have been justified by contemporary criteria abstractly asserted, if control was not exercised in fact. Even "a legislative declaration of jurisdiction without evidence of further active and continuous assertion of dominion over the waters is not sufficient to establish the claim." 381 U.S. at 174. The point is clearly established in the authoritative discussion of the requisites of historic claims found in *Juridical Regime of Historic Waters, Including Historic Bays* (1962), U.N. Doc. A/CN.4/143. This study, prepared by the Codification Division of the United Nations Office of Legal Affairs at the request of the International Law Commission, states (pp. 37–44):

> There seems to be fairly general agreement that at least three factors have to be taken into consideration in determining whether a State [1] has acquired a historic title to a maritime area. These factors are: (1) the exercise of authority over the area by the State claiming the historic

[1] In this, as in other international law writings, "State" is used in the sense of "nation," not a component such as a State of the United States.

> right; * * *. First, the State must exercise authority over the area in question in order to acquire a historic title to it. * * *
>
> * * * * *
>
> There can hardly be any doubt that the authority which a State must continuously exercise over a maritime area in order to be able to claim it validly as "historic waters" is sovereignty. * * *
>
> * * * * *
>
> In the first place the acts must emanate from the State or its organs. * * *
>
> Furthermore, the acts must be public * * *.
>
> Another important requirement is that the acts must be such as to ensure that the exercise of authority is effective.
>
> * * * * *
>
> The first requirement to be fulfilled in order to establish a basis for a title to "historic waters" can therefore be described as the effective exercise of sovereignty over the area by appropriate action on the part of the claiming State. * * *

Mere espousal of principles under which an exercise of authority would be justified in a particular area is by no means the equivalent of an actual, effective exercise of sovereignty over that area against specific persons in concrete instances. If any area is to be recognized as historic inland waters under the Submerged Lands Act and the Convention on the Territorial Sea and the Contiguous Zone, the basis must be found in affirmative governmental action.

B. UNITED STATES V. CALIFORNIA, 381 U.S. 139, SHOULD CONTROL THE PRESENT CASE

Louisiana is equally mistaken in its contention that *United States* v. *California,* 381 U.S. 139 and 382 U.S. 448, permits "inland waters" as referred to in the Submerged Lands Act to be construed in accordance with either the Convention on the Territorial Sea and the Contiguous Zone or the prior practice of the United States, whichever proves to be the more liberal to the State in any particular situation. La. Br. 82. The error is apparent on the face of the opinion. The Court clearly stated that when the Act was passed "there was no international accord on any definition of inland waters" (381 U.S. at 164); that prior to that decision "no one could say with assurance where lay the line of inland waters as contemplated by the Act" (381 U.S. at 166); and that the Court adopted the definitions of the Convention for purposes of the Act, as the "best and most workable definitions available" of "the words which Congress employed" (381 U.S. at 165). Definitions exclude as well as include. The certainty that the Court sought to provide would disappear if the Convention were always subject to being supplanted by reference to the former practices which the Court found too uncertain to constitute a practical guide to the meaning of the statute.

The definitive adoption of the Convention as the standard for construing the Act is also made clear by the terms of the decree, 382 U.S. 448, 450:

> As used herein, "inland waters" *means* waters landward of the baseline of the territorial sea, which are now recognized as internal waters of

> the United States under the Convention on the Territorial Sea and the Contiguous Zone. * * * [Emphasis added.]

Louisiana draws a contrary conclusion from the ensuing sentence, "The inland waters referred to in paragraph 2(b) hereof include—" followed by an enumeration of categories of inland waters, which Louisiana construes as leaving the way open for California to claim inland waters not recognized by the Convention. That interpretation is obviously wrong. The latter sentence merely left it open to California to contend that the enumeration did not exhaust the areas that might be inland waters under the Convention. Had the Court intended what Louisiana suggests, it would instead have substituted "includes" for "means" in the sentence defining inland waters.

This reading is supported by the Court's refusal to include in the decree a provision requested by California, which would have reserved judgment upon the status of waters claimed to be historic inland waters other than historic bays. The United States opposed that request on the ground that the Court had already held that *all* questions concerning inland waters under the Act were to be resolved in accordance with the Convention, including situations not specifically adjudicated, such as historic waters, and that while the status of such areas under the Convention was not decided, the Court had held that their status was to be determined in accordance with the Convention and was not left wholly at large. Decree Proposed by the United States and Memorandum in Support of Pro-

posed Decree, *United States* v. *California*, No. 5, Original, October Term, 1965, pp. 9–10. Although the Court did not explain its reasons for omitting California's proposed reservation from the decree, we think it reasonable to infer that the Court accepted our view that all questions regarding inland waters, not specifically mentioned, were included in the general direction that they should be settled in accordance with the Convention, whatever its effect might be determined to be.

Alternatively, Louisiana argues that, even if the *California* case did adopt the Convention as the exclusive source of the definition of California's "inland waters" as referred to in the Submerged Lands Act, a different definition of the same term "inland waters" should apply to Louisiana because the Louisiana coast has different characteristics. La. Br. 59–79. The contention has two intolerable consequences. First, it assumes that Congress meant different rules for defining "inland waters" to apply to different States, thus encouraging rivalry and playing favorites. Second, it would throw every coastal boundary line into confusion.[2] No State would know, without

[2] The application of constant standards to the different geographical characteristics of particular areas may required varying, but never inconsistent, particularizations. In California, where there are two daily low tides of unequal height, the "low-water line" mentioned in the Convention as the line shown on official charts is the line of mean lower low water, *United States* v. *California*, 381 U.S. 139, 175–176; but in Louisiana, where there is only one low tide on most days, it is the line of mean low water. U.S. Mot. 55; La. Br. 86. In each case the line is that shown (when any low-water line is shown) on the official charts.

litigation, whether the California or Louisiana interpretation applied to it, or whether it might not persuade the Court that a still different interpretation applied to its own geography that would yield it a still larger share of the offshore resources. This is utterly inconsistent with the Court's express desire to provide both "definiteness of expectation" and a "single coastline for both the administration of the Submerged Lands Act and the conduct of our future international relations." *United States* v. *California*, 381, U.S. 139, 165–166.

The Convention on the Territorial Sea and the Contiguous Zone was designed to apply to all the seacoasts of the world regardless of local peculiarities. See opening brief for the United States, p. 114. Whether an immovable boundary would be preferable in some respects, for the purposes of the Submerged Lands Act, is not relevant here. The Attorney General made such a recommendation to Congress, Hearings, S. Committee on Interior and Insular Affairs, S.J. Res. 13, 83d Cong., 1st sess., 926, but Congress rejected that approach. Louisiana now is asking the Court to do what Congress refused, rather than to effectuate what Congress enacted.

C. THE COAST GUARD REGULATION DEFINING THE "INLAND WATERS" IN WHICH SHIPPING IS TO FOLLOW THE INLAND RULES OF NAVIGATION IS IRRELEVANT UNDER THE SUBMERGED LANDS ACT

Louisiana argues in support of the Coast Guard Line that, since the 1895 Act required the Commandant of the Coast Guard to delimit inland waters in the jurisdictional sense, the lines he has drawn must be accepted as jurisdictional lines, even though he

has put a different interpretation on his duty, has excluded jurisdictional criteria from his consideration, and disclaimed drawing jurisdictional lines.

In our opening brief (pp. 23–25) we showed that the Act of February 19, 1895, does not delegate to the Commandant the power to define the inland waters under the sovereignty of the United States. Thus, Louisiana's premise fails. But, even if the premise were sound, Louisiana's conclusion could not be drawn from it. The materials collected in our opening brief (pp. 25–41) make it plain that the Commandant neither exercised a power to fix the territorial limits of the United States nor undertook to find and describe the territorial limits according to jurisdictional criteria in national or international law.

It is no answer for Louisiana to say, "The statement of the Commandant * * * that 'these lines are not for the purpose of defining Federal or State boundaries, nor do they define or describe Federal or State jurisdiction over navigable waters,' may describe his intent, but not his directive." La. Br. 20–21. The argument confuses two dissimilar situations. Where an Act of Congress or any other rule of law attaches specified legal consequences to an act or order, then the actor's mistaken belief about the consequences of what he has done is often legally irrelevant. But here the question is, what is it that the Commandant has done. On this point his characterization and intent are decisive. If the 1895 statute directed him to find where the outer limits of the inland waters of the United States in the territorial sense are located in accordance with jurisdictional criteria and he made a find-

ing as directed, then the line he drew might be persuasive of the territorial limits. But if those were the instructions and the Commandant deliberately ignored all jurisdictional criteria and drew a line based upon other standards, as his order itself declared, then his finding would have no more tendency to prove what the jurisdictional limits actually are than a map he drew for his children showing the waters sailed by Captain Kidd.

Similarly, even if the 1895 statute delegates to the Commandant power to make an original determination of the territorial limits of the United States, that power will not be exercised by an order to which the Commandant assigns a different significance because it will not be the character of order for which the statute provides. The Commandant's characterization in the document, at least when it conforms to his intent, determines its legal nature. Were he mistaken as to the meaning of the 1895 statute, the mistake might invalidate his order but it cannot give the actual document a character that its words disclaimed and he did not intend.

It is clear that the orders issued by the Commandant have been nothing more than directions concerning rules of navigation.[3] They have not been either

[3] Louisiana is correct in its reference to the Coast Guard publication, *Law Enforcement at Sea Relative to Smuggling* (1932), La. Br. 45, which repeated the definitions of the 1925 orders discussed at U.S. Br. 35–37 (including reference to a 20-mile headland-to-headland line, not quoted by Louisiana), and should have been cited by us as part of that discussion. As Louisiana recognizes, it affirmatively shows that the Coast

findings applying jurisdictional criteria or orders defining, or intended to define, the jurisdictional limits of the United States. We summarized the virtually unbroken practice in our opening brief and refer here only to the specific orders cited by Louisiana. The Commandant's notice of April 27, 1953, of the public hearing which preceded establishment of the line now relied on by Louisiana included the following (18 Fed. Reg. 2556; emphasis added):

> 3. The primary purpose for boundary lines and their establishment is and has been since 1895 to definitely indicate where the provisions of the international rules for navigation at sea apply and where the provisions of the navigation rules for harbors, rivers, and inland waters generally in 33 U.S.C. 155 to 222 shall apply and be followed by navigators of vessels. *These lines are based on the needs of safety in navigation.* * * *

His order of December 1, 1953, establishing the line following the hearing, included the following (18 Fed. Reg. 7893):

> All the comments, views, and data submitted in writing or orally at the public hearing, together with the recommendations of the Commander of the 8th Coast Guard District, were considered by the Merchant Marine Council. Where practicable, the comments, views, and data relating to safe navigation were accepted and parts of the described lines as proposed

---

Guard did *not* regard the rules-of-the-road lines as delimiting inland waters; the fact that it once mistakenly supposed them to delimit the territorial sea is of no possible help to Louisiana.

were revised accordingly. The comments, data, and views submitted which were based on reasons not directly connected with promoting safe navigation were rejected.

The establishment of descriptive lines of demarcation is solely for purposes connected with navigation and shipping. Section 2 of the act of February 19, 1895, as amended (33 U.S.C. 151), authorizes the establishment of these descriptive lines primarily to indicate where different statutory and regulatory rules for preventing collisions of vessels shall apply and must be followed by public and private vessels. These lines are not for the purpose of defining Federal or State boundaries, nor do they define or describe Federal or State jurisdiction over navigable waters. Upon the waters inshore of the lines described, the Inland Rules and Pilot Rules apply. Upon the waters outside of the lines described, the International Rules apply.

In a notice of June 14, 1967, announcing hearings on proposed revisions of the same line, he said (32 Fed. Reg. 8763; emphasis added):

> The present demarcation line is not easily located and therefore is not serving its *purpose of informing mariners about the rules of the road applicable to their present positions.* * * * The proposed change would bring the demarcation line back to the shoreline and from headland to headland or along *any conveniently located islands* close to shore. This would make it possible for all mariners to locate the demarcation line easily without recourse to elaborate navigation.

> * * * The existing Gulf demarcation line extends almost 20 miles out into international waters, as recognized by the State Department. The United States has authority under International Law to establish Rules of the Road beyond the limit of territorial waters and International Law is flexible in this area. The relocation of the line well within territorial waters removes any question of International Law.
>
> * * * Moving the line so that it is crossed as a vessel enters any jetty or passes a headland will make the location of the transition from one set of rules to the other easy to pinpoint. As most vessels in the Gulf area do not have radar, *a simple visual identification of the line will permit the line to effect its purpose and should accordingly increase safety of navigation.*

After hearings at which many objections to the change were voiced, the Commandant withdrew the proposal by a notice of October 16, 1967, which included the following (32 Fed. Reg. 14775; emphasis added):

> 3. The line of demarcation which is authorized under 33 U.S. Code 151 is intended *solely* for the purpose of distinguishing between the "high seas" and "inland waters," which are subject to different laws prescribing "Rules of the Road." The limited character of this line was recognized by the Circuit Court of Appeals in New York in the case of U.S. v Newark Meadows Improvement Co. (173 Fed. 426). This Court said in part: "* * * This legisla-

> tion, however, was for the purpose of delineating inland waters of the United States in order to inform navigators where the inland rules of navigation, as distinguished from the international rules, become applicable. * * *" While it is recognized that other laws utilize this line because it is convenient and well known, such statutory references do not change the basic purpose for which this line is drawn, and *revisions may be made in this line when the needs of navigation require such actions.*
>
> 4. A number of comments and views submitted did not address themselves to the purpose for which the line of demarcation is authorized under 33 U.S. Code 151, but to other subjects, including State boundaries, State rights, fishing rights, etc. These comments and views were not considered as germane to the proposals under consideration and no action is taken with respect thereto. * * *

This is in accord with 33 C.F.R. § 2.10–1, which gives three definitions of "high seas" for three different purposes; the definition referring to the lines drawn under 33 U.S.C. 151 is limited to the purposes of the Rules of the Road and statutes that specifically refer to those lines. For all other purposes, it defines "high seas" by reference to the "territorial sea" and "internal waters" as such, not by reference to the Coast Guard lines.[4]

Ever since 1943, the Coast Guard regulations have clearly stated that the lines drawn by the Commandant under the 1895 Act are merely lines of con-

[4] See pp. 61–62, *infra*.

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venience, designating areas in which the Inland Rules are to be followed, and do not delimit inland waters in the jurisdictional sense. See U.S. Br. 33–35. In this period Congress has twice reenacted, with amendments not here material, the Act adopting the Inland Rules, Act of May 21, 1948, 62 Stat. 249, and Act of August 8, 1953, 67 Stat. 497, and has twice provided for adoption of revisions of the International Rules, Act of October 11, 1951, 65 Stat. 406, and Act of September 24, 1963, 77 Stat. 194. In every case, the provision for application of the Inland Rules to "inland waters" was left unchanged. "Any doubt as to the construction of the section should be deemed resolved by the consistent departmental practice existing before its reenactment." *Cook* v. *United States,* 288 U.S. 102, 120. This Court has often held "that the reenactment by Congress, without change, of a statute, which had previously received long continued executive construction, is an adoption by Congress of such construction." *United States* v. *Cerecedo Hermanos,* 209 U.S. 337, 339.

This principle is particularly applicable where the administrative interpretation was brought to the attention of Congress at the time of the reenactment. Such was the case here in connection with the 1951 adoption of the International Rules as amended in 1948. One of the purposes of that revision was to extend the International Rules to aircraft while waterborne; but as to them, section 1 of the Act made the International Rules inapplicable not only in inland waters but in the territorial waters as well. In ex-

plaining the significance of that distinction, Kenneth S. Harrison, Chief Counsel of the Coast Guard, said (Hearings, Subcommittee on Maritime Affairs, H. Committee on Merchant Marine and Fisheries, H.R. 3670, 82d Cong., 1st sess., 33–34):

> The term "territorial waters" is to be distinguished from "inland waters" as the latter term is used in line 2, page 2, of the bill. Territorial waters extend to 3 miles from our coast lines.
>
> On the other hand, inland waters are those waters inward of the line fixed by the Commandant, United States Coast Guard, under the act of February 19, 1895, as amended (33 U.S.C. 151) delimiting the high seas and inland waters for the purpose of the application of the international rules and the inland rules, respectively. Therefore, the provision that the new international rules, with respect to aircraft, will not apply to any territorial waters of the United States is designed to preserve to the Civil Aeronautics Board its existing authority * * * to prescribe safety rules governing the operation of aircraft, water-borne as well as air-borne, within the territorial jurisdiction of the United States.[5] In most instances, the line demarking the high seas and inland waters extends within the 3-mile limit defining territorial waters. In those situations the rules of the Civil Aeronautics Board for aircraft would extend to the limit of territorial waters rather than to the limit of inland waters.

[5] This authority is now vested in the Administrator of the Federal Aviation Agency, under section 601 of the Federal Aviation Act of 1958, 72 Stat. 775, 49 U.S.C. 1421.

Thus it was brought to congressional attention that the territorial sea, representing the territorial jurisdiction of the United States, was not related to the lines drawn under the 1895 Act to indicate where the Inland Rules should be followed, and that it was only "in most instances" that the latter lines did not extend beyond the territorial sea. There is no justification for Louisiana's assertion that the 1951 Act showed a congressional intent to measure the territorial sea from the Inland Rules lines (La. Br. 32–33).

Louisiana also argues that the Coast Guard Line should be construed as a delineation of inland waters in the jurisdictional sense because the United States has no right to impose rules of navigation beyond its territorial limits. La. Br. 29–41, 216–235. This contention breaks down at several points. First, the United States certainly has power to impose rules of navigation within its territorial sea (as it has done for aircraft under the 1951 Act, *supra*). Thus, to justify the Coast Guard Line, it would not be necessary in any event to construe it as identifying true inland, as distinguished from territorial, waters.

Second, the Commandant is of the view that the United States does have power to prescribe navigational rules for adjacent parts of the high seas. We know this, for he said so in his notice of June 14, 1967, 32 Fed. Reg. 8763, pp. 12–13, *supra*. Whether he is right or wrong in his belief, it is clear that, purely from considerations of navigational convenience, he has often deliberately drawn lines that extend beyond the three-mile limit of the territorial waters, in the belief

that it was proper to do so for the limited purpose involved. Thus his lines do not reflect either his interpretation of where jurisdictional limits are or his judgment of where they should be.

Finally, there is at least some authority to support the Commandant's view. Beginning with the Act of August 4, 1790, sec. 31, 1 Stat. 145, 164, federal statutes have authorized customs inspection of vessels within four leagues of the coast. 19 U.S.C. 1401(m), 1581(a), 1709(c).[6] These provisions were modeled on early British hovering acts, though their validity was later disputed by Great Britain. See *Cook* v. *United States*, 288 U.S. 102, 111–115. In *The Annapolis*, Lush. 295, 167 Eng. Rep. 128 (Adm. 1861), it was held that inbound foreign vessels were bound by a British law requiring them to take on a pilot at a point outside British territorial waters. By the Act of October 14, 1966, 80 Stat. 908, 16 U.S.C. 1091–1094, the United States asserted exclusive control over fisheries in the high seas for a distance of nine geographical miles outside the territorial sea. All of these situations, like the Coast Guard Line, involved assertion of a right to exercise authority for a limited purpose only, within waters closely adjacent to the territorial sea. Whether or not they are sufficient to justify imposition of the Inland Rules in such an area,

[6] The original restriction, that this authority be limited to vessels bound for the United States, was omitted from section 2 of the Act of July 18, 1866, 14 Stat. 178, R.S. § 3059, but remained in R.S. 3067 until eliminated by sec. 581 of the Tariff Act of 1922, 42 Stat. 858, 979. See *Cook* v. *United States*, 288 U.S. 102, 112–114.

they do show that there is reasonable basis for the Commandant's interpretation of his responsibility. In view of the fact that the Commandant has emphasized the limited nature of the authority that he asserts, and that throughout this period the United States has vigorously advocated much more restrictive principles for the delimitation of inland waters in the jurisdictional sense, the acquiescence of foreign nations, on which Louisiana relies to show historic establishment of a territorial claim (La. Br. 252–254), seems more likely to be indicative only of their acceptance of the Commandant's view that this sort of limited regulation is not violative of international law.

Apart from this basic fallacy of Louisiana's reliance on the Coast Guard Line, some details of its discussion may be briefly noted. Louisiana says that the 1895 Act authorized federal agencies to determine "a physical or factual question, that is, where inland waters ended and the high seas began." La. Br. 6. Presumably the function is thus characterized in an effort to rationalize its delegation to a succession of officials, at present the Commandant of the Coast Guard. However, the concept of inland waters is a legal, not a factual one. Of course it must begin with a knowledge of the physical facts, but beyond that it involves the application of principles of national and international law and, within those limits, of national policy. Merely by calling it a "physical and factual" matter, Louisiana cannot give plausibility to its contention Congress has entrusted to the Commandant of the Coast Guard the

function of establishing the jurisdictional limits of the United States.

Louisiana refers to the fact that certain other statutes define "high seas", for their particular purposes, by reference to the lines drawn under the 1895 Act. La. Br. 6–7, 22. These include the Officers Competency Act of 1939, 53 Stat. 1049, as amended, 46 U.S.C. 224a, quoted by Louisiana (La. Br. 7), the Coastwise Loadline Act, 49 Stat 888, as amended, 46 U.S.C. 88 *et seq.*, and the Act for inspection of seagoing vessels propelled by internal combustion engines, 49 Stat. 1544, 46 U.S.C. 367. La. Br. 22. All are purely navigational regulations, the applicability of which it was reasonable and convenient to define by reference to well-known Coast Guard lines. All three apply *seaward* of the Coast Guard lines, so cannot possibly be construed as assertions of the lines as jurisdictional limits.[7]

Louisiana seems to suggest that once the Commandant has established a line under 33 U.S.C. 151, any subsequent attempt to reduce or eliminate it will be ineffective, as violative of the rights of the State. La. Br. 9, fn. 14. This is perhaps an inevitable corollary of the State's position; but if so, it only serves to demonstrate the unsoundness of its premise. The Act authorizes the Commandant to designate lines "from time to time," plainly contemplating continuing re-

[7] Not cited by Louisiana is the Towline Act, 35 Stat. 428, as amended, 33 U.S.C. 152, which applies within the Coast Guard lines. It is exactly comparable to the Inland Rules, and adds nothing to the significance of the lines delimiting the area of applicability of those rules.

visions as required by experience or changing conditions. Obviously, such revisions might be required in either direction, and from the beginning it has been the practice to move lines inward as well as outward. See U.S. Br. 31, fn. 12, and 32. The line drawn around the Mississippi River Delta by Commerce Department Circular No. 230 (2d ed., 1917) was eliminated by Commerce Department Circular No. 230 (6th ed., 1935). *Cf.* 33 C.F.R. (1st ed., 1939) § 302.100. Other examples could be cited. If, as Louisiana argues, the Commandant's action in retracting lines were void, the whole purpose of establishing the lines as a definitive guide for the Rules of the Road would be defeated, and navigators would be left to come to their own conclusions as to the legality or illegality of the orders changing the lines, in view of objections that might or might not be made by the coastal States. Moreover, it would demonstrate that the Commandant's actions do not have the conclusive effect that Louisiana asserts for them. Nor can Louisiana escape this dilemma by suggesting that the revised lines would be controlling as to the Rules of the Road but not for jurisdictional purposes; for that would be simply to accept our contention that the lines have only navigational and not jurisdictional significance.

Louisiana seeks to bolster the Coast Guard Line by referring to *Louisiana* v. *Mississippi,* 202 U.S. 1, and to a map accompanying S. Doc. No. 7, 28th Cong., 2d sess., made to show the original limits of the United States and the limits of areas acquired by treaties from France and Spain. La. Br. 22–24, and Exh. 69.

Both that map and sketch maps included in the Court's opinion include lines drawn opposite the coast—about 60 miles from shore in the case of the Senate Document, from 10 to 20 miles from shore in the maps in 202 U.S. at 4, 5, and 10. However, it is apparent that those lines were merely drawn to complete the enclosure and identification of the land areas involved; none is drawn with any precision, and all differ from one another. None has any relationship to the Coast Guard Line, the delimitation of inland waters, or even the territorial sea. At an earlier stage of this case, Louisiana referred to *Louisiana* v. *Mississippi* to support its claim to a three-league boundary, and the Court rejected the contention, saying that "only the portion of the water boundary adjacent to Mississippi was considered by the Court" in that case. 363 U.S. 1, 70. The decision is equally irrelevant here for the same reason.

Louisiana argues at some length that the territory of a State cannot be reduced without its consent, and that therefore, after it accepted the Coast Guard Line as its coast line, its resulting boundary could not be reduced without its consent. La. Br. 54–59, 70. We do not believe that Louisiana ever did acquire a boundary measured from the Coast Guard Line, but there is no occasion to discuss that question or the issue whether a State's boundaries may ever be reduced without its consent, because the subject of State boundaries is wholly irrelevant to the case. Regardless of where the State's boundary may be, the submerged lands given to it by the Submerged Lands Act do not

extend more than three geographical miles from the low-water line and outer limit of inland waters. Submerged Lands Act, sec. 2(b), 67 Stat. 29, 43 U.S.C. 1301(b); *United States* v. *Louisiana,* 363 U.S. 1, 66–79. As in *United States* v. *Louisiana,* 339 U.S. 699, 705, "The matter of State boundaries has no bearing on the present problem."

Most of Louisiana's argument in support of the Coast Guard Line rests on the thesis that "inland waters" must always be given an invariable meaning—that the inland waters referred to in the Submerged Lands Act must be the same as those referred to in the Act of February 19, 1895. La. Br. 49–54. However, in an abrupt change of reasoning, Louisiana also argues that its "inland waters" under the Submerged Lands Act must be something quite different from California's "inland waters" under the same Act, because of the less stable character of the Louisiana coast and the special problems of mineral development in that area. La. Br. 59–79. In our view, these contentions represent impermissible extremes, of formalistic rigidity on the one hand and of *ad hoc* improvisation on the other. The Court has held, as the best means of giving certainty to the statute, that its terms are to be defined by reference to the convention. *United States* v. *California,* 381 U.S. 139, 161–167. Other statutes, enacted for different purposes, may be construed in different ways; but if certainty is to be achieved at all, the meaning of a particular statute can hardly be permitted to vary from place to place according to the relative stability of the shore or the

relative importance of conflicting economic interests. The Submerged Lands Act was passed for the specific purpose of defining mineral rights, and the Attorney General's recommendation that a fixed boundary be established was not accepted by Congress. P. 8, *supra*. Louisiana was where the most important offshore mineral development was taking place; we cannot suppose that Congress overlooked it in passing the Act, or failed to consider how the Act would apply there as well as elsewhere. The boundary adopted by Congress is plainly an ambulatory one; the mere fact that it may have disadvantages cannot prevent its application. *Cf. Louisiana* v. *Mississippi*, 384 U.S. 24. Moreover, as we have pointed out (U.S. Br. 41–46), the Coast Guard lines have been far more changeable than even the Louisiana shore.

In short, the special circumstances found in Louisiana are no justification for giving the Act a different meaning there; and even if they were, the meaning proposed by Louisiana would only make the situation worse, not better.

II. THE COAST AND BOUNDARY LINES SHOULD BE DRAWN IN ACCORDANCE WITH THE DECREE SUBMITTED BY THE UNITED STATES

A. SABINE PASS TO TIGRE POINT

The only difference between the United States and Louisiana in this area is over the effect of navigational channels dredged in the bed of the Gulf of Mexico seaward of the shore or jetties, at Sabine Pass, Calcasieu Pass, and Freshwater Bayou. Louisiana considers such

dredgd channels part of the baseline of the three-mile belt (La. Br. 333–354); the United States does not.[8]

At Sabine and Calcasieu Passes, Louisiana's present claim of the area within three miles of dredged channels is inconsistent with the award made to the United States, unopposed by Louisiana, by the Supplemental Decree of December 13, 1965, 382 U.S. 288. That decree gave the United States all the submerged lands more than three miles south of the Coast Guard Line. As appears from La. Resp. and Opp., Exh. 6 (on which the broken blue line marks the landward limit of the federal area), the Sabine and Calcasieu dredged channels and belts three miles around them extend more than 10 and 7 miles, respectively, into the area awarded to the United States. Thus Louisiana, in claiming those areas under its proposed alternative decree, not only asks more than is now open to it to claim, but also discloses what a recent fabrication its theory of dredged channels is. The claim is unsupported by the terms or history of either the

[8] Louisiana is mistaken in its assertion (La. Br. 335) that the United States has conceded dredged channels, as far as the outer ends of the jetties, to be the outermost permanent harbor works that form an integral part of the harbor system. Channels within jetties are inland waters because they have been enclosed, not because they have been dredged. See the International Law Commission's commentary on Article 8 of the Convention on the Territorial Sea and the Contiguous Zone: "The waters of a port up to a line drawn between the outermost installations form part of the internal waters of the coastal State." *Report of the International Law Commission Covering the Work of Its Eighth Session, U.N. General Assembly, Official Records: Eleventh Session, Supplement No. 9* (A/3159), p. 16; 2 *Yearbook of the International Law Commission* (1956) p. 270. For discussion of Article 8, see pp. 28–29, *infra*.

Submerged Lands Act or the Convention on the Territorial Sea and the Contiguous Zone.

Under the Submerged Lands Act, the "coast line" from which to measure the width of Louisiana's three-mile belt of submerged lands consists of two elements, "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." Sec. 2(c), 67 Stat. 29, 43 U.S.C. 1301(c). It is not clear in which element Louisiana would classify dredged channels. Its discussion, without distinguishing the two, seems to invoke both; but it is clear that dredged channels could not be both. In fact, they are neither.

The notion that part of the open sea can be made "inland" by being deepened is so contrary to the usual understanding of the term as to require clear authority in its support. None such has been advanced. As originally introduced, the Submerged Lands Act included after the words "inland waters" in the definition just quoted, the phrase, "which include all estuaries, ports, harbors, bays, channels, straits, historic bays, and sounds, and all other bodies of water which join the open sea." That phrase was deleted by the Senate committee and from that fact Louisiana somehow draws the conclusion that Congress approved the phrase. La. Br. 18, fn. 18; 336–339. In *United States v. California,* 381 U.S. 139, 150–167, the Court gave careful consideration to the significance of that deletion, and concluded that it showed a congressional intent to leave the definition of "inland waters" to the

Court. In any event, Louisiana's attempt to read "channels" in the deleted phrase as referring to channels dredged in the bed of the open sea is unjustified. We are not aware of any discussion of such channels in the extensive history of the Act, and the phrase as a whole clearly shows that land-bordered channels were referred to. No one would think of including a deepened part of the seabed in an enumeration of "bodies of water which join the open sea." [9]

Since the Court has held that "inland waters" as used in the Submerged Lands Act are those waters that are recognized as "internal waters" under the Convention on the Territorial Sea and the Contiguous Zone, *United States* v. *California*, 382 U.S. 448, 450, authorities prior to the Convention are no longer relevant except as they may still throw light on the meaning of the Convention. The Court's reference in *The Delaware*, 161 U.S. 459, 463, to a dredged harbor entrance as "inland waters of the United States within the meaning of this act" (the Act of March 3, 1885, 23 Stat. 438), La. Br. 339, is irrelevant not only for that reason but also because of the Court's conclusion, stated in the same sentence, that Congress had used the term "inland waters" in that Act to designate "waters within which it is necessary for safe navigation to have a local pilot." See U.S. Br. 40–41, 51–52.

[9] The language quoted by Louisiana (La. Br. 337) from H. Rept. No. 215, 83d Cong., 1st sess., p. 4, was simply a paraphrase of the language quoted above, which was included in the House bill there being reported (H.R. 4198) but not in the Act as passed. Louisiana omits the words "of water," which appeared after "bodies" in the last line of the passage.

Under Article 5 of the Convention, internal waters are those on the landward side of the baseline of the territorial sea. 15 U.S.T. (Pt. 2) 1609. No part of the baseline defined by the Convention runs seaward of dredged channels as such. Louisiana seeks to bring dredged channels under the category of "permanent harbour works which form an integral part of the harbour system," which are to be considered part of the "coast" under Article 8, 15 U.S.T. (Pt. 2) 1609. La. Br. 334–335, 340–354. In analyzing this suggestion, it is important to remember that the Convention uses "coast" in the sense of "shore." It uses "baseline" to designate the "political coast line" comprising the low-water line and inland-waters closing lines, called the "coast line" in the Submerged Lands Act.[10] Thus, when Louisiana argues that dredged channels are harbor works such as form part of the "coast" under Article 8, it means that they are part of what we would call the shore, not that they are the line marking the seaward limit of inland waters. Although Louisiana also argues that they are inland waters, no baseline encloses them, except the "shore" that Loui-

[10] *E.g.*, Article 4 provides that straight baselines must not depart appreciably from "the general direction of the coast." Since baselines are part of the "political coast line" they would establish its direction and so would never depart from it; obviously "shore" is referred to. Similarly, Article 7 refers to bays "the coasts of which belong to a single State." The "political coast line" runs outside the bays that qualify under Article 7; they have "shores" but not "coasts" in that sense. The corresponding word in the French text is "côte," which does not carry the connotation of a "political coast line." See 15 U.S.T. (Pt. 2) 1616–1617.

siana takes the channels themselves to be. But obviously inland waters cannot enclose themselves.

Apart from that, the baseline under the Convention is not simply the "coast," but the "low-water line along the coast," except as otherwise provided in the Convention. Article 3, 15 U.S.T. (Pt. 2) 1608. Even if dredged channels were part of the coast under Article 8 (which we deny; U.S. Br. 51–56), still they would not be part of the baseline because there is no low-water line along them. Similarly, where the Convention provides for closing lines across entrances to inland waters, it directs them to be drawn between points on the low-water line. Article 7 (bays; 15 U.S.T. (Pt. 2) 1609); Article 13 (rivers; 15 U.S.T. (Pt. 2) 1610). Dredged channels can neither be delimited as land nor enclosed as inland waters under the Convention.

B. TIGRE POINT TO SHELL KEYS

From Tigre Point eastward, the coast curves slightly northward to Southwest Pass, east of which the shore of Marsh Island again curves somewhat southward, and south of that, in turn, are the Shell Keys. Louisiana calls this area "Outer Vermilion Bay," and encloses it by a line from Tigre Point to a low-tide elevation south of the Shell Keys. La. Br. 329–333; La. Exh. 64. This is improper, for several reasons. A bay cannot be formed by islands or low-tide elevations (U.S. Br. 60–66), and even if it could, there would have to be some additional lines to shore to complete the enclosure. The shortest possible lines back to the mainland would bring the combined length

of the closing lines to more than the permissible maximum of 24 miles.[11] Apart from these objections, this is not a well-marked indentation and does not contain landlocked waters; its area is only about half that of a semicircle drawn on the total of all the closing lines, as Paragraph 3 of Article 7 of the Convention would require if this were a situation in which multiple closing lines were permissible. Ignoring the requirements that the indentation be well-marked and contain landlocked waters, Louisiana tries to meet the semicircle test by combining this area with Vermilion Bay; but Vermilion Bay is plainly part of a single indentation with West and East Cote Blanche and Atchafalaya Bays, so that only a single 24-mile closing line limit is allowable for the whole, and most of that is needed between Point au Fer and South Point, leaving only just enough for a short crossing in Southwest Pass. Louisiana has no acceptable answers to any of these objections.

Louisiana cites a variety of materials to support its contention that a bay may be created by the presence of islands in the open sea. La. Br. 116–136. Many of them, however, relate to islands in the mouth of an indentation—an entirely different matter. Mississippi Sound, referred to by Louisiana (La. Br. 118), is such a situation. So also is the Saronikos Gulf, illustrated by Strohl, *International Law of Bays* (1963)

[11] Louisiana's line from Tigre Point to the Shell Keys is 22.08 miles long. It requires at least 2.4 miles of water crossing to get from the Shell Keys to Marsh Island, and about 0.4 mile to get from Marsh Island to the mainland. This makes a total of 24.88 miles.

76 (La. Br. 129), although Commander Strohl is plainly mistaken in assuming that Article 7 of the Convention applies the 24-mile limitation separately to each mouth formed by the island, rather than to the sum of the two months. See fn. 12, *infra*.

Article 7 plainly sanctions this use of islands at the mouth of a bay.[12] It has been suggested that the rule may sometimes be extended to islands outside the mouth of a bay, that are not actually touched by a direct line between the headlands; but in our view this is improper. Louisiana cites Shalowitz' proposal that lines be drawn to such islands, within the limits of a "rule of reason" (La. Br. 291; La. Exh. 57), but omits his recognition that "The rule proposed would still leave unresolved the question of how far seaward from the headland line islands could be in order to be incorporated under the rule," and his alternative proposal of "A more restrictive rule * * * to join the island to each headland only if some part of the

[12] Article 7 specifies that "Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths." 15 U.S.T. (Pt. 2) 1609. This obviously contemplates that those lines will be considered the closing lines of the bay for all purposes, including delimitation of its area and application of the 24-mile limitation on its entrance width. *Cf.* the commentary of the International Law Commission that "the total length of the lines drawn across all the different mouths will be regarded as the width of the bay." *Report of the International Law Commission Covering the Work of Its Eighth Session, U. N. General Assembly, Official Records: Eleventh Session, Supplement No. 9* (A/3159) p. 15; 2 *Yearbook of the International Law Commission* (1956) 269. See 1 Shalowitz, *Shore and Sea Boundaries* (1962) 221. See pp. 53–55, *infra*.

island is on a direct headland-to-headland line." 1 Shalowitz, *Shore and Sea Boundaries* (1962) 225, fn. 38. While Mr. Shalowitz appears to prefer his first proposal, we consider the more restrictive rule to be the proper interpretation of the Convention. It avoids endless disputes over what are the limits of the "rule of reason" and, as Mr. Shalowitz points out (*ibid.*), it is more in keeping with maximum freedom of the seas, which has always been the basic principle of American maritime policy. In any event, Mr. Shalowitz' doubts even as to islands closely adjacent to the direct closing line, as illustrated by his figure 45 (La. Exh. 57), make it abundantly clear that he would consider out of the question the extension of lines out to remote islands as proposed by Louisiana.

Buzzards Bay (La. Br. 116–117) and Long Island Sound (La. Br. 119–120) have historically been treated as inland waters, and shed no light on the geographical principles of the Convention.[13] The site of the offense involved in *Manchester* v. *Massachu-*

[13] It may be noted, however, that the widest entrances to both are less than six miles, so that both are entirely enclosed within the territorial waters of the United States. Undoubtedly this has influenced their historic treatment. Compare the United States proposal at the 1930 League of Nations Conference for the Codification of International Law: "Where the delimitation of territorial waters would result in leaving a small area of high sea totally surrounded by territorial waters of one or more States, the area is assimilated to the territorial waters of such State or States." *Acts of the Conference for the Codification of International Law: Minutes of the Committees*, vol. 3, Minutes of the Second Committee: Territorial Waters (L.N. Doc. C. 351(b). M. 145(b). 1930. V) 201.

setts, 139 U.S. 240 (La. Br. 117), was less than 1¼ miles from shore (139 U.S. at 242 and 256), so that the State's jurisdiction was fully sustained by the Court's holding that "the minimum limit of the territorial jurisdiction of a nation over tide-waters is a marine league from its coast" (139 U.S. at 258); the further discussion regarding bays was therefore unnecessary to the decision, and it does not appear that the specific question of whether islands can create a bay was considered by the Court.

Dr. Pearcy's diagram of the Maine coast (La. Br. 118–119) can hardly be of comfort to Louisiana, as it shows a closing line pulled back into a bay, to touch a small island located well landward of a direct line between the mainland headlands. Pearcy, *Measurement of the U.S. Territorial Sea* (1959) 40 Dept. of State Bulletin 963, 968, fig. 9. We believe that Dr. Pearcy is equally mistaken in using islands as he does either to extend or to restrict a bay.[14] Florida Bay, also treated as a bay by Dr. Pearcy (La. Br. 125), is distinguishable in that the keys forming its south side have been connected by a permanent highway; but in pointing out this distinction we do not necessarily agree that even that circumstance justifies his use of the keys. Dr. Boggs' discussion of islands (La. Br. 127–128) was in an entirely different connection: namely, the proper way of drawing a median line be-

[14] It may also be observed that the indentation depicted by Dr. Pearcy, though not identified by him, is obviously Little Machias Bay, the closing line of which is absolutely immaterial in drawing the three-mile limit. The three-mile limit in that vicinity is entirely controlled by points and rocks farther seaward.

tween two nations that face one another across a narrow waterway, where there are islands in the waterway. His proposal was that such islands should be ignored unless greater in area than the smallest amount of water that could be enclosed between island and mainland by parallel lines tangent to the extremities of the island; in the latter case, he would measure the median line from the island rather than the mainland. This has nothing whatever to do with the use of islands in drawing the three-mile limit off the open coast; his proposal in that connection was entirely different.[15] Boggs, *Delimitation of Seaward Areas under National Jurisdiction* (1951), 45 American Journal of International Law 240, 254–259.

The Anna, 5 C. Rob. Adm. 373 (1805), did not hold that islands should be "assimilated to the mainland" (La. Br. 127), and had nothing to do with the delimitation of bays. It merely held that the three-mile belt is to be measured from islands in the same way as from the mainland. Article 10 of the Convention so provides, 15 U.S.T. (Pt. 2) 1610.

The North Atlantic Coast Fisheries Arbitration (La. Br. 130) is wholly irrelevant. The tribunal specifically held that the treaty there under consideration referred to "bays" in a geographical sense and was not limited to such as were subject to the territorial jurisdiction of Great Britain. It said (1 *North Atlantic Coast Fisheries Arbitration* (S. Doc. No. 870, 61st Cong., 3d sess.), Award of the Tribunal, 93 (Cong. Doc. Ser. No. 5929)):

[15] See pp. 49–50, *infra.*

> 3. The United States also contend that the term "bays of His Britannic Majesty's Dominions" in the renunciatory clause must be read as including only those bays which were under the territorial sovereignty of Great Britain.
>
> But the Tribunal is unable to accept this contention: * * *.

Thus, its delimitation of bays had nothing to do with limits of sovereignty or inland waters. Moreover, its delimitations were not part of its holding, but were merely recommendations to the parties of lines that might be agreed on as conveniently identifiable by fishermen. For the bays of Chaleurs, Miramichi, Egmont, St. Ann's, and Fortune, the lines described were the limits of exclusion—that is, they included the three-mile belt outside the bays, which American fishermen were required to respect under the treaty. For Barrington, Chedebucto, St. Peter's, Mira, and Placentia Bays, the tribunal recommended that American fishermen be required to keep more than three miles outside proposed lines described as "for or near" those bays.[16] It is interesting to note that the tribunal felt it necessary to make a specific recommendation that "Long Island and Bryer Island on St. Mary's Bay, in Nova Scotia, shall, for the purpose of delimitation, be taken as the coasts of such bays." *Id.* 98. *Cf.* U.S. C. & G.S. Chart No. 1106.

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[16] Louisiana misquotes the line "for or near" Mira Bay, which the tribunal described as "the line from the light on the east point of Scatari Island to the northeasterly point of Cape Morien." *Id.* 98.

As Louisiana recognizes (La. Br. 117), the Convention requires a bay to be a "well-marked indentation." Lines extending out from the shore, to and between islands, do not make an "indentation" in anything. Nothing in the Convention justifies the use of islands as headlands of a bay, except where they are in the mouth of a bay and so provide intermediate entrance points between the main headlands.

Even if the Shell Keys are accepted as headlands, the area between them and Tigre Point contains only about half the area of a semicircle drawn on the closing line. Louisiana seeks to overcome that deficiency by including Vermilion Bay, inside Southwest Pass, as part of the same indentation. La. Br. 329–333. It is evident from the map that this is sheer fiction (see La. Exh. 64); but Louisiana supports it with the argument that a bay must have one unbroken low-water line, and that this requires the line to be followed around inside the pass, which results in delimiting line. Louisiana seeks to overcome that deficiency Br. 111–113, 330–331. However, this *a priori* approach requires the initial assumption that the outer area is a bay—that is, a well-marked indentation containing landlocked waters—before there can be any occasion to see if its area satisfies the semicircle test. On the contrary, it is neither a well-marked indentation nor landlocked. Moreover, Louisiana's premise that the low-water line must be followed continuously would require it to continue around West and East Cote Blanche, Atchafalaya and Four-league Bays to Point au Fer (if not indeed to the

mouth of Oyster Bayou, on the Gulf south of Fourleague Bay; see La. Exh. 1 and Map 23 of 41: the 31st map of La. Exh. 119). Instead, Louisiana abandons the low-water line somewhere inside Vermilion Bay, to cross the four-mile entrance of West Cote Blanche Bay and the 2½ miles of water between Marsh Island and the Shell Keys, apparently untroubled by any inconsistency between its "continuous low-water line" theory and this procedure or its use of islands as headlands in general.

Perhaps recognizing that Vermilion Bay and the Gulf outside Southwest Pass are palpably not a single body of water, Louisiana argues that this does not matter because the area of Vermilion Bay must be taken into account anyhow, for purposes of the semicircle test, under the "rule" that all tributaries are so included. La. Br. 330–331. There is no such rule. Article 7 of the Convention requires that the area of *the indentation* is to be compared with that of the semicircle; the only question is whether particular areas are part of the indentation. Tributaries having a wide opening into the main indentation, such as the opening of East Cote Blanche Bay into Atchafalaya Bay, obviously should be considered part of the same indentation.[17] On the other hand, tributaries that have their own distinct and essentially isolated configuration, such as Vermilion Bay where it is tributary to the Gulf of Mexico, must be recognized as separate bodies of water. Under Article 7 the question is not

[17] Indeed, without East Cote Blanche Bay, Atchafalaya Bay does not meet the semicircle test.

whether they are *tributary to* the indentation, but whether they are *part of* it.

In discussing the same subject in relation to "Ascension Bay," La. Br. 274–277, Louisiana cites 1 Shalowitz, *Shore and Sea Boundaries* (1962) 219–220, for the proposition that the areas of pockets, coves, and tributary waterways are required to be included in determining the area of an indentation for purposes of the semicircle test. La. Br. 275. What Shalowitz says is that for "an indentation containing" pockets, coves, or tributary waterways, the area of the whole indentation, including the pockets, coves, etc., is to be compared with the semicircle. We agree; but the question of whether the tributary bodies are contained in the indentation or are separate, adjacent bodies of water, must first be determined by a realistic appraisal of their physical configurations. Louisiana's suggestion that it is all one indentation as far as one continuous low-water line can be traced (La. Br. 276-277) is wholly unrealistic. It would result in treating all the indentations along the coast as a single indentation.

Commenting on Mr. Shalowitz' statement, Louisiana says that the "pockets, coves, and tributary waterways must be separate and distinct and outside the unit of configuration of the overall indentation, or no special rule as regards them would be necessary." La. Br. 275. But the truth is that there is no "special rule" as regards them. The Convention does not mention them at all. To the extent that they are taken into account, it is because they are part of the indentation itself, and

so are included under the provisions regarding it. Where they are not part of the indentation, they are not to be considered. The fact that Mr. Shalowitz discussed something that Louisiana thinks requires no discussion can hardly be taken as proof that he was talking about something else. Moreover, the lack of need for discussion is not so apparent as Louisiana suggests. Mr. Shalowitz himself, both at the point cited by Louisiana and elsewhere, has suggested as an alternative approach that coves and tributaries should be excluded from consideration if they, considered separately, qualify as inland waters. See U.S. Br. 103–104. This would exclude not only distinct bodies of water connected with the main indentation only by narrow channels, but also many wide-mouthed inner coves and bays that we think should properly be considered part of the main indentation for purposes of the semicircle test.

Discussing the same subject again at another point (La. Br. 111–113), Louisiana says that excluding distinctly separate bodies of water in measuring the area of an indentation "is but a thinly disguised advocacy of the Boggs' Reduced Area Formula." La. Br. 111. While the Boggs formula did have the effect of excluding small tributaries, it did so by a mechanical process which also had other significant effects. In contending that "an indentation" does not mean an aggregation of separate indentations, we are not advocating the Boggs formula or anything like it. In pointing out that "The present article contains a mandate to follow the low-water mark" (La. Br. 111), Louisiana over-

looks the fact that the mandate is to follow "the low-water mark around the shore of the indentation" (Article 7, Paragraph 3, 15 U.S.T. (Pt. 2) 1609), not to follow the low-water mark out of the indentation and into an adjoining one.

In an attempt to evade the embarrassment of West and East Cote Blanche and Atchafalaya Bays, Louisiana says that it passes over West Cote Blanche Bay because it does not need it to meet the semicircle test. Further, it points to our statement that where two areas meet the semicircle test equally well separately or in combination, there is no need to debate whether they are in fact one indentation or two; and from that it draws the extraordinary conclusion that it is equally unnecessary to decide which treatment is proper if the test can be met on one basis alone. La. Br. 331–332, especially fns. 346 and 347. Obviously, if the test can be met on one basis but not the other, as is the case here, it is vital to know which basis is the correct one. We think it clear that Atchafalaya, East and West Cote Blanche, and Vermilion Bays are one indentation, the entrances to which cannot exceed 24 miles in all under Article 7. See fn. 12, p. 31, *supra*. Even if there were no other objection to Louisiana's proposed line from Tigre Point to the Shell Keys, it would have to be rejected for this reason.

C. SHELL KEYS TO POINT AU FER: ATCHAFALAYA BAY

Basically, Louisiana's discussion of this area (La. Br. 304–329) is fully answered by our opening brief (U.S. Br. 65–87). However, some details of Louisiana's discussion call for further comment.

Louisiana asserts that the current Coast and Geodetic Survey Charts of the Marsh Island area show the reefs and islands south of Marsh Island "as a solid and continuous extension of the Marsh Island onshore area." La. Br. 306, fn. 305. That is not true. The current edition of U.S. C. & G.S. Chart No. 1277 (11th ed., July 1, 1968) shows that even at low tide, it is not possible to get from the Shell Keys to Marsh Island without crossing at least a quarter of a mile of open water up to 6 feet deep. Moreover, both that map and the adjacent U.S. C. & G.S. Chart No. 1276 (10th ed., Nov. 13, 1967) carry in that area the legend, "Shell reefs *partly* bare at MLW" (emphasis added), showing that the depiction of rather large areas as continuous expanses exposed at low tide is only a matter of cartographic convenience and not of geographical accuracy. See La. Exhs. 63 and 64. Map 4 of 5 (the 37th map of La. Exh. 119), originally made at four times the scale of Chart No. 1276, and still more than twice its scale as reduced in La. Exh. 119, shows the reefs in exact detail. As shown there, any possible route from the Shell Keys to Marsh Island would involve water crossings totaling almost a mile, at low tide. Since low-tide elevations, as distinguished from the foreshore of dry land or islands in the mouths of bays, cannot be used as part of the enclosure of bays under Article 7, the total distance of about 2½ miles would be considered a water crossing for the purposes of Article 7.

Louisiana has challenged the accuracy of the 1960–1961 survey of the Atchafalaya Bay area as shown on Maps 1 through 5 of 5 (the 34th through 38th maps

of La. Exh. 119), asserting that both islands and low-tide elevations existed at that time which are not shown on the maps. La. Br. 319–320. The basis for that contention is an independent analysis of infrared photographs that were made at the time of the survey. La. App. C, pp. 59–71. While that analysis is undated, we understand that it is recent. It was made by persons who had no connection with the making of the survey or photographs, and is based on mistaken assumptions as to the technical character of the photography—assumptions that materially affect the proper interpretation of the photographs. Louisiana's report states, "The overall appearance of the contact prints suggests that a technique of exposing infrared film in a camera equipped with a minus blue or Wratten 12 filter, which filters out all wavelengths less than 500 millimicrons, was used" (La. App. C, 60) and analyzes the pictures on that assumption. As counsel for Louisiana was informed on June 6, 1968, what was actually used was not a 500 millimicron filter, but was rather a 700 millimicron filter (equivalent to a Wratten 88a). No blue filter was used. The film was badly overexposed (as shown by circular and radial patterns on the film, reflected from the camera platen by strong light rays that entirely penetrated the film emulsion). Because of the overexposure, the photographs penetrated the water in the manner characteristic of panchromatic photography, rather than showing the contrast between land and water typical of infrared photography. They were therefore rejected by the Coast and Geodetic Survey as utterly

useless for distinguishing between submerged and emergent areas.

As appears from the report of the original survey, submitted by the Coast and Geodetic Survey to the joint federal and state committee under whose supervision the work was done, the mapping was based on detailed field inspection of every elevation in the area, in relation to both mean low- and mean high-water levels. Repeated observations were made and elevations were ascertained on the ground by tide-staff readings and leveling by appropriate engineering procedures. The infrared photographs referred to by Louisiana were only supplementary to the basic work; because they proved technically deficient, it was found that no use could be made of them. Certainly a careful survey made on the ground cannot be impeached by a theoretical analysis of aerial photographs, particularly where the analysis is based on basic misapprehensions as to the technical character of the photographs, and in any event the photographs proved so unsatisfactory as to be of no use even when properly understood.

Apart from this, the fact is that the Coast and Geodetic Survey made a detailed field inspection of the entire mouth of Atchafalaya Bay in March 1968, which disclosed that there are now no elevations at the mouth of the bay above the level of mean high water.[18] The highest points in the area are now at x=1,899,110, y=282,309, shown on Map 3 of 5 (the

[18] A copy of the report of this survey was furnished to Louisiana on June 6, 1968.

36th map of La. Exh. 119) as bare 1.3 feet at mean high water, now 1.3 feet *below* mean high water; x=1,902,253, y=283,051, shown on Map 3 of 5 as awash at mean high water,[19] now 1.4 feet *below* mean high water; and x=1,895,980, y=289,652, shown on Map 3 of 5 as awash at mean high water, now 1.4 feet *below* high water. The point x=1,896,099, y=289,481, shown on Map 3 of 5 as bare 1.5 feet at mean high water, is now 1.9 feet *below* mean high water. The points x=1,894,143, y=289,093, and x=1,887,477, y=288,182, formerly awash at mean high water (Map 3 of 5), now are not exposed even at low water. In view of this, Louisiana's new analysis of the 1961 photographs has no present importance in any event. Since there are now no elevations at the mouth of the bay above the level of mean high water, the basis on which Louisiana claims the benefit of islands and their adjacent low-tide elevations in that area (La. Br. 326–328) has disappeared. With it has disappeared the need to consider the legal status of very small and transient elevations above mean high water.[20]

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[19] "Awash" indicates an elevation exactly the same as the designated water level. "Awash at high tide" does not satisfy the Convention definition of an island as "above water at high-tide." Article 10, 15 U.S.T. (Pt. 2) 1609.

[20] Louisiana says that at the 1930 League of Nations Conference for the Codification of International Law, the United States approved *The Anna*, 5 C. Rob. Adm. 373, 165 Eng. Rep. 809 (1805). La. Br. 324. However, the position of the United States, that the definition of islands should be limited to those "capable of use," was diametrically opposed to Louisiana's interpretation of *The Anna*. *Acts of the Conference for the Codification of International Law: Minutes of the Commit-*

D. POINT AU FER TO OYSTER BAYOU

As before (U.S. Br. 87), there is no disagreement regarding this stretch of the coast.

E. OYSTER BAYOU TO RACCOON POINT: CAILLOU BAY

Our basic difference regarding this area is that Louisiana asserts, and the United States denies, that a chain of islands near the mainland can create an "indentation" constituting a bay under Article 7 of the Convention. The subject is fully discussed at U.S. Br. 60–66 and pp. 30–36, *supra*. Only a few points of Louisiana's argument (La. Br. 295–301) require further comment here.

Louisiana says that the Chapman Line should not be departed from here because we have referred to that line as representing the federal position as to the proper coast line of Louisiana. La. Br. 296, citing U.S. Mot. 78. We said that it represented the federal position when it was drawn in 1950; since the Court has now held that the coast line under the submerged Lands Act of 1953 is to be determined in accordance with the quite different criteria of the Convention on the Territorial Sea and the Contiguous Zone, *United States* v. *California*, 381 U.S. 139, 163–167, the United States obviously has had to modify its position in various respects.

Louisiana says that "at all times prior to the filing of its present Motion, the United States has agreed"

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tees, vol. 3, *Minutes of the Second Committee: Territorial Waters* (L.N. Doc. C.351(b).M.145(b).1930.V) 200. No agreement was reached on the report of the Second Subcommittee, cited by Louisiana.

that a closing line should be drawn across Caillou Bay. No such agreement is cited, and we are aware of none. On the contrary, by the Interim Agreement of October 12, 1956, on file herein, Louisiana has recognized that the United States is free to claim a coast line landward of the Chapman Line.[21]

Louisiana argues that our comparison of Caillou Bay to the Santa Barbara Channel is unsound because "To say that Caillou Bay is a route of international commerce like the Santa Barbara Channel would be to ignore completely the facts of geography." La. Br. 297–298. We did not say that Caillou Bay was such a route; we specifically pointed out that it is not. U.S. Mot. 71, fn. 16. What we did say was that Caillou Bay is a part of the open sea,

[21] That agreement includes the following provisions:

2.

The submerged lands in the Gulf of Mexico are divided for the purposes hereof into four zones as shown on the plat annexed hereto as Exhibit "A", which reflects as a base line the so-called "Chapman-Line". No inference or conclusion of fact or law from the said use of the so-called "Chapman-Line" or any other boundary of said zones is to be drawn to the benefit or prejudice of any party hereto * * *. The aforesaid zones are as follows:

(a) Zone No. 1 comprises the area lying seaward of and within three (3) geographical miles of the so-called "Chapman-Line".

* * * * *

6.

Notwithstanding any adverse claims by the other party hereto, the State of Louisiana as to any area in Zone No. 1 * * * shall have exclusive supervision and administration * * *.

partially screened by islands, and that *in that respect* it is like the Santa Barbara Channel. U. S. Mot. 70–71. Nothing that Louisiana has said tends to refute that statement.

Louisiana charges us with inconsistency in refusing to recognize Caillou Bay because it is formed by islands, whereas we recognize the Terrebonne Bay complex although "the western perimeter of this bay is formed in part by a fringe of islands." La. Br. 298–299. As explained in our brief, the western perimeter seems more properly to be regarded as part of the mainland, broken up by many intersecting waterways, than as true islands. U.S. Br. 93–94. The true islands that partially delimit the complex on the south either lie in the mouth of the main indentation (*i.e.*, are crossed by a direct line between the headlands) or lie in the sub-mouths formed by such islands. See U.S. Br. 94, fn. 43.

The fact that Caillou Bay is so designated on maps (La. Br. 301) of course has no legal significance. So are San Luis Obispo Bay and Santa Monica Bay, both of which the Court has held not to be inland waters. *United States* v. *California,* 381 U.S. 139, 143–144, fns. 3 and 6, and 170.

Louisiana's assertion that "the basic truth is that the waters of Caillou Bay are sufficiently enclosed to constitute inland waters" (La. Br. 301) is simply an invitation to the Court to abandon the precise criteria of the Convention and to adopt some new, indefinite, subjective view of what is "sufficiently enclosed." This is quite irreconcilable with the Court's conclusion in

the *California* case that the Submerged Lands Act should be given certainty by defining "inland waters" in the Act as they were defined in the Convention.

Louisiana also refers to our former statement that the islands along the Louisiana coast were so situated that the waters between them and the mainland were inland waters, as a "binding assertion exploited by" the United States at an earlier stage of the case (La. Br. 301), and as a position "urged * * * vehemently in these same proceedings to the detriment of Louisiana" (La. Br. 134–135). When our statement was made, it was not intended to gain any advantage for the United States, and it did not do so. Its purpose was to relieve the Court of the burden of considering arguments on a question which we believed to be wholly academic so far as the actual issues were concerned. That question was, whether the description of Louisiana in its Enabling Act as "including all islands within three leagues of the coast" (2 Stat. 641) included, as a matter of statutory construction, all intervening waters between such islands and the mainland. Believing that in Louisiana all such waters were sufficiently enclosed to constitute inland waters quite apart from that language, we saw no justification for asking the Court to decide what effect the language would have had if the geography had been different. However, under the Convention on the Territorial Sea and the Contiguous Zone, which the Court has now held controls the meaning of "inland waters" under the Submerged Lands Act, such waters are not inland waters. That would lead to a different result at

Chandeleur and Breton Sounds, but we have specifically stated that we do not ask to be relieved of our concession as to that area. U.S. Mot. 78–80; U.S. Br. 121–123. Elsewhere, while the Convention gives the status of territorial sea, rather than inland waters, to waters between the mainland and islands whose territorial sea merges with that of the mainland (as is the case in Louisiana), this does not necessarily alter the outer limit of the territorial sea, which is the real issue here. Caillou Bay well illustrates the situation.

Our concession did not specify any particular method of delimiting the supposed inland waters within the coastal islands, and there was none that had achieved general recognition. As the International Court of Justice said in the *Fisheries Case* (*United Kingdom* v. *Norway*), I.C.J. Reports (1951), 116, 131:

> In this connection, the practice of States does not justify the formulation of any general rule of law. The attempts that have been made to subject groups of islands or coastal archipelagoes to conditions analogous to the limitations concerning bays (distance between the islands not exceeding twice the breadth of the territorial waters, or ten or twelve sea miles), have not got beyond the stage of proposals.

The proposal that had been made in that connection by Dr. S. Whittemore Boggs, the Geographer of the Department of State, was the "reverse arcs" method. Under that method, where there were offshore islands whose territorial waters, as measured by the usual arcs-of-circles method from the low-water line on the

islands, merged with the territorial waters of the mainland, as similarly measured, a series of "reverse arcs" were then drawn. The reverse arcs had their centers at the intersection points of the arcs of the first envelope line, so that the reverse arcs were tangent to the coast at the points where the first arcs had their centers. This produced two envelope lines that were parallel in the geometric sense—that is, every line normal to one (*i.e.*, perpendicular to its tangent at the point of tangency) was also normal to the other, the distance between them along those normals being uniformly three miles. Between these two parallel envelope lines was a belt of water uniformly three miles wide, which Dr. Boggs classed as territorial waters; the waters landward of the reverse arcs he considered inland waters. Boggs, *Delimitation of Seaward Areas Under National Jurisdiction* (1951) 45 American Journal of International Law 240, 254–256.

Figure 1, opposite, illustrates the application of this method at Caillou Bay. So far as our concession goes, we believe that the waters enclosed by the "reverse arcs" answer much more reasonably to the terms of our concession regarding waters "between [islands] and the mainland" than do the waters of the extended area that Louisiana would enclose by a line from Raccoon Point to the shore east of Oyster Bayou. However, under the Convention, it is not correct to class such waters as internal waters; and as the three-mile limit, which is all that is material in the present case, is the same regardless of how the waters within the reverse arcs are classified, we suggest that the Court

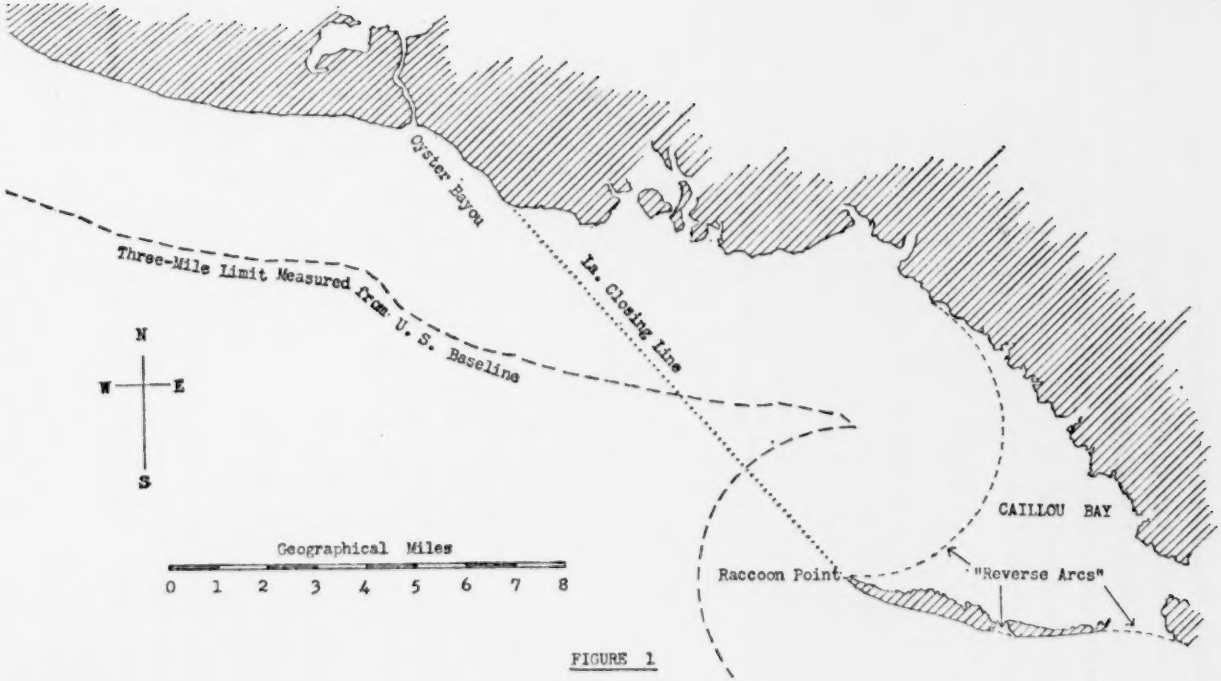
Oyster Bayou
La. Closing Line
Three-Mile Limit Measured from U. S. Baseline
N
W
E
S
Geographical Miles
0 1 2 3 4 5 6 7 8
CAILLOU BAY
Raccoon Point
"Reverse Arcs"

FIGURE 1

may consider it preferable to depart from our concession to the extent of classifying these waters in accordance with the Convention, rather than in accordance with the "reverse arcs" principle. So far as Louisiana's property rights are concerned, the change is only one of terminology, not of substance.

F. RACCOON POINT TO WHISKEY ISLAND

Louisiana is correct in pointing out that there is no justification for drawing closing lines between the successive islands of the Isles Dernieres in this area (La. Br. 300), and we have already indicated that our proposed decree should be amended to delete them. U.S. Br. 89–90.

G. WHISKEY ISLAND TO CAMINADA PASS

The parties are in agreement that the closing lines of the Timbalier Bay complex are to be drawn between the islands in its mouth, although we arrive at that conclusion by different routes. U.S. Br. 90–97; La. Br. 285–295. The significant difference between us is that Louisiana would draw the lines between the outermost points on the islands, whereas the United States would draw them between points very much closer together, which seem to us more naturally to mark the entrances into the bay.

Louisiana is perfectly correct in saying (La. Br. 122–124) that when a bay has both inner and outer headlands, the closing line should be drawn between the outer headlands (assuming other requirements are met). However, this does not mean that the outermost points on the open coast in the general vicinity of a bay are to be considered headlands of the bay.

The headlands or natural entrance points are those points, not where the coast merely turns, but where it turns *to form the bay.* This distinction is illustrated by the difference between the parties regarding the eastern "natural entrance point" to Whiskey Pass, shown in Figure 5, U.S. Br. 91. No doubt there is a turn in the shoreline at the point chosen by Louisiana, but it is not a turn that can be said in any realistic sense to form the indentation of Whiskey Pass. The closing lines between Timbalier Island and the easternmost of the Isles Dernieres, shown on La. Exh. 62, present the same sort of situation on a larger scale. In our view, the southern points of the islands, between which Louisiana draws its closing line, are in no sense "natural entrance points" of Timbalier Bay.

Although Louisiana uses these islands to effect a considerable seaward extension of the bay, she seems to argue that Article 7 of the Convention requires islands to be treated as water except for the single purpose of determining the size of the comparison semicircle. La. Br. 286. That is not a tenable interpretation of Paragraph 3 of Article 7, which reads (15 U.S.T. (Pt. 2) 1609):

> For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if

they were part of the water areas of the indentation.

It is true that the only express reference to the use of several closing lines across multiple mouths relates to construction of the semicircle to which the area of the bay is to be compared; but it is evident that they are to be used likewise in applying the 24-mile limitation.[22] Indeed, it is only on that understanding that the indentation between Southwest Pass and Point au Fer, comprising Vermilion, East and West Cote Blanche, and Atchafalaya Bays, can be brought within the 24-mile limitation. This is in accord with the commentary of the International Law Commission (*Report of the International Law Commission Covering the Work of Its Eighth Session: U.N. General Assembly, Official Records: Eleventh Session Supplement No. 9* (A/3159), p. 15; 2 *Yearbook of the International Law Commission* (1956), p. 269):

> (2) If, as a result of the presence of islands, an indentation whose features as a "bay" have to be establishd has more than one mouth, the total length of the lines drawn across all the different mouths will be regarded as the width of the bay. Here, the Commission's intention was to indicate that the presence of islands at the mouth of an indentation tends to link it more closely to the mainland, and this consideration may justify some alteration in the ratio between the width and the penetration of the indentation. In such a case an indentation which, if it had no islands at its mouth, would not fulfil the necessary conditions, is to be rec-

[22] See 1 Shalowitz, *Shore and Sea Boundaries* (1962) 221.

ognized as a bay. Nevertheless, islands at the mouth of a bay cannot be considered as "closing" the bay if the ordinary sea route passes between them and the coast.

Presumably it was considered too self-evident to require elaboration that in the case of a bay with multiple mouths, as referred to in the second sentence of Paragraph 3, the perimeter circumscribing its area as defined in the first sentence is likewise to be taken, *mutatis mutandi,* as comprising the several lines between the several pairs of natural entrance points, and the several low-water lines on the intervening islands and the mainland, rather than the single low-water line and closing line as described in the first sentence in the case of a bay with a single mouth. On this understanding, it is seen that islands in the mouth of a bay, which provide the natural entrance points of the several sub-mouths, are not "within" the bay so as to be counted as part of the water area under the third sentence of Paragraph 3. The area of the bay is bounded by the low-water line on its shore. In the case of an island in the mouth of the bay, that is the low-water line on the landward side of the island. Thus the whole island is outside the perimeter by which the area of the bay is delimited under the first sentence of Paragraph 3.

The provision emphasized by Louisiana, that "Islands within an indentation shall be included as if they were part of the water area of the indentation" (La. Br. 286), relates only to determining the *area* of the indentation, once its perimeter has been defined. Until the perimeter has been defined, it cannot

be known whether an island is within the indentation or not. If the provision meant, as Louisiana apparently suggests, that islands are to be treated as water for *all* purposes, it would of course preclude not only Louisiana's use of islands as principal headlands (which is improper for other reasons) but also the use of islands as intermediate entrance points and part of the closure line, which Paragraph 3 clearly intends.

Louisiana complains that we are wrong in following the shore of an island screen landward of a direct line between the mainland headlands (La. Br. 285-295); but while we regard this as the proper procedure where it leads to the natural entrance points of the several mouths,[23] it has had little effect here. Except for a few hundred feet at the western end of Timbalier Island, our entire closing line is substantially seaward of a direct line between the mainland headlands as we identify them[24]—about 2½ miles seaward at the eastern end of Timbalier Island, and even more at Whiskey Pass. Louisiana would put the

[23] See 1 Shalowitz, *Shore and Sea Boundaries* (1962) 221, Figure 40, showing how closing lines are to be drawn between the natural entrance points of each mouth formed by a screen of islands, whether inside or outside a direct line between the mainland headlands. Dr. Pearcy does the same. Pearcy, *Measurement of the U.S. Territorial Sea* (1959) 40 Dept. of State Bulletin 963, 966, fig. 4.

[24] These are the tip of the peninsula southwest of Pelican Lake, at about 29°05′11″ N., 90°51′17″ W., and a point on the mainland opposite the eastern end of East Timbalier Island, at about 29°05′07″ N., 90°14′29″ W. See La. Exh. 62. The western headland is just off the edge of that map, but its position can be plotted in the margin, for the purpose of seeing how a direct closing line would run.

main headlands farther seaward; but Louisiana's use of Whiskey Island as the western headland is improper, as the mainland cannot be said to extend, at the most, south of Caillou Boca. Louisiana speculates that our eastern headland may be incorrect because there may be some low-water connection, not shown on the maps, between the mainland and East Timbalier Island, which Louisiana considers the main headland. La. Br. 292–294. This is sheer guesswork. The facts can be ascertained if they are considered material, but we think they are not. Both parties agree, though for different reasons, that closing lines are to be drawn to appropriate points on the islands. The disagreement as to which are the appropriate points (*i.e.*, the "natural entrance points" of the several mouths of the bay) will be unaffected by the rationale by which we arrive on the islands. The identification of the main headlands of the indentation can be material only if the Court accepts Louisiana's contention that it is not proper to draw closing lines between the natural entrance points of mouths formed by islands when such lines lie landward of a direct line between the mainland headlands.

H. CAMINADA PASS TO EMPIRE CANAL: "ASCENSION BAY"

Louisiana's discussion of this area as a whole (La. Br. 270–278) has been fully answered by our opening brief (U.S. Br. 97–106).[25]

[25] Nomenclature has nothing to do with the legal status of an area: but we may observe that the ancient maps produced by Louisiana as precedent for the name "Ascension Bay" (La. Exhs. 49 and 50) seem to have used the name "Lac de l'As-

We do not here consider the question of whether it is necessary that the semicircle test be met by the waters enclosed by the 24-mile line drawn within an oversize bay (La. Br. 272–274), as the question is not reached in this case. If the inner waters of Caminada and Barataria Bays are part of the same indentation as the waters of the Gulf outside Caminada and Barataria Passes, the test is met; if they are not, "Ascension Bay" itself does not qualify to have a 24-mile line drawn within it. However, without expressing an opinion on the subject, we may note that Mr. Shalowitz, on whom Louisiana so much relies, clearly states that the semicircle test must be met where the 24-mile line is drawn. 1 Shalowitz, *Shore and Sea Boundaries* (1962) 223. Our own discussion of the semicircle test in relation to the area between Caminada Pass and Sandy Point Bay (U.S. Mot. 72–74) related to that area considered by itself; it was not directed to the contention subsequently advanced at La. Resp. and Op. 47–49 that a 24-mile line in that vicinity was justified by considering the whole coast from Belle Pass to Southwest Pass as an oversized bay.[26]

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cension" or "Ascension Bay" to refer to small bodies of water having no discernable identity of size, shape, or location with the large body of open water to which Louisiana now gives that name.

[26] Similarly, our reference to the coast as being only slightly curved (U.S. Mot. 72), to which Louisiana takes exception (La. Br. 272) was specifically limited to the stretch from Caminada Pass to Sandy Point Bay; it did not refer to the whole coast from Belle Pass to Southwest Pass, as Louisiana indicates.

Louisiana's discussion of the general subject of combining the areas of geographically distinct bodies of water, for purposes of the semicircle test, has been discussed in connection with "Outer Vermilion Bay," pp. 36–40, *supra*.

I. EMPIRE CANAL TO SOUTHWEST PASS

Louisiana argues that the former spoil bank at Pass Tante Phine should be part of the baseline because it appears on the current U.S. C. & G.S. Chart No. 1272 (21st ed., May 6, 1968). La. Br. 279. We are informed by the Coast and Geodetic Survey that the observations on which that was based were made in 1959 or earlier. On March 28, 1967, the Army Corps of Engineers informed us that the spoil bank is no longer exposed at low tide. That fact, asserted at U.S. Mot. 75, has not been questioned by Louisiana. In defining an ambulatory boundary the Court should look to conditions as they now are, not as they were nine years ago, in any situation where an intervening change is shown.

J. SOUTHWEST PASS TO MAIN PASS: MISSISSIPPI RIVER DELTA

A very large part of Louisiana's brief is devoted to discussion of this area, principally East Bay. La. Br. 177–269. However, except as to Louisiana's historic claims, little need be added to what we have said previously. U.S. Br. 113–120.

1. East Bay

Louisiana argues that East Bay is historic inland waters (La. Br. 185–258), that it is inland waters

under the Convention as part of the Port of New Orleans (La. Br. 258–260) and as the mouth of a river (La. Br. 260–262), and that in any event part of it meets the geographic criteria of a bay comprising inland waters under Article 7 (La. Br. 262–264). These contentions are all unsound.

First, Louisiana argues that East Bay is historic inland waters because within historic times it has satisfied contemporary criteria for inland waters. La. Br. 185. That reflects a misunderstanding of the subject. Historic waters are those over which control has actually been exercised. *United States* v. *California*, 381 U.S. 139, 172. It is not enough to show that control *could have been justified* by contemporary criteria, if it was not exercised in fact. Moreover, the Court held in the *California* case that prior to the Convention "there was no international accord on any definition of inland waters" (281 U.S. at 164), and it rejected prior definitions espoused by the United States in construing the term as used in the Submerged Lands Act. Waters are not made "historic" by the mere fact that in the past they met general criteria unilaterally espoused at that time by the coastal nation. It is therefore unnecessary to consider whether East Bay once was, or now would be, within any definition of inland waters as formerly recognized by the United States.

Next, Louisiana argues that East Bay is historic inland waters because it has been included within an area designated by the Coast Guard as subject to the Inland Rules of Navigation. La. Br. 218–235. We have already shown the irrelevancy of such designation to jurisdictional questions. U.S. Br. 18–46 and

pages 8–24, *supra*.[27] Louisiana also asserts that the Coast Guard, through the Captain of the Port of New Orleans, has actually exercised its general authority as far seaward as the Coast Guard Line. La. Br. 235–237. We are advised by the Coast Guard that this is incorrect, and that the only authority exercised by the Captain of the Port to that distance is his authority under certain navigational statutes that make specific reference to that line, such as the Towline Act, 35 Stat. 428, as amended, 33 U.S.C. 152.[28] In all other respects, his authority is exercised only within territorial waters of the United States. This distinction is expressed in 33 C.F.R. § 2.10–1:

> (a) For the purposes of describing Coast Guard jurisdiction generally in section 2, Title

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[27] *Cf.* 3 Gidel. *Droit International Public de la Mer* (1930–1934) 624–627, as quoted in *U.N. Conference on the Law of the Sea, Official Records*, vol. 1, *Preparatory Documents* (A/CONF. 13/37) p. 25:

"* * * there is nothing in common between the appropriation by a State of a certain area as "historic waters" and the extension of some of that State's powers beyond its maritime territory into the part of the high seas known as the contiguous zone. * * *"

(The "contiguous zone" referred to by Gidel was not, of course, the specific zone having its maximum limit 12 miles from the baseline, as established more than 20 years later by the Convention on the Territorial Sea and the Contiguous Zone.)

[28] There are other Acts which impose certain regulations only on vessels operating *seaward* of the Coast Guard Lines. *E.g.*, the Officers Competency Act of 1939, 53 Stat. 1049, as amended, 46 U.S.C. 224a; the Coastwise Loadline Act, 49 Stat. 888, as amended, 46 U.S.C. 88 *et seq.*; and the Act of June 20, 1936, for inspection of seagoing vessels propelled by internal combustion engines, 49 Stat. 1544, 46 U.S.C. 367. Obviously such Acts could not impute any jurisdictional significance to the Coast Guard Lines.

14, U.S. Code, the act of May 10, 1956 (46 U.S.C. 390), and other laws relating to navigation, navigable waters, or vessel inspection, the term "high seas" shall be considered to be those parts of a sea or ocean which are not included in the territorial sea or in the internal waters of a nation.

(b) For the purposes of the Rules of the Road as contemplated by section 2 of the act of February 19, 1895 (33 U.S.C. 151), or enforcement of R.S. 4438a, as amended (46 U.S.C. 224a), the Coastwise Load Line Act, as amended (46 U.S.C. 88), the act of June 20, 1936, as amended (46 U.S.C. 367), and other laws referring to the act of February 19, 1895, the term "high seas" shall be construed to be the waters upon which the "Rules of the Road—International" shall apply. (See section 82.1 of this chapter.)

(c) For the purpose of describing Coast Guard jurisdiction with respect to criminal offenses under Title 18, U.S. Code, the term "high seas" as defined in section 7 of Title 18, U.S. Code, includes the territorial sea as well as the seas beyond the territorial sea which are "out of the jurisdiction of any particular state". In some instances, individual sections of Title 18 cover offenses committed on both the high seas and on navigable waters of the United States within a State. Of course, criminal jurisdiction on the high seas outside the territorial sea is restricted to American-flag vessels.

Louisiana also argues that the United States exercised jurisdiction over the waters of East Bay by the Executive Order of August 8, 1907 (La. Exh. 44),

establishing the Tern Island Bird Reservation comprising islands of the Delta within a delineated perimeter. This Court has already held that a reference to "islands" within a certain area does not include the waters within that area. *United States* v. *Louisiana*, 363 U.S. 1, 66–70.

Next, as an exercise of federal control, Louisiana refers to a map prepared by the Census Bureau in 1937. La. Br. 239–242. The making of the map was not an exercise of control; it was merely an explanation of the basis for certain statistics included in the 1940 census. Louisiana itself points out that large bodies of inland water were deliberately excluded (La. Br. 241, fn. 251), and we cannot suppose that Louisiana would be willing to accept the Census Bureau's line as a whole. It appears, for example, to follow substantially our recommendation at West Bay, "Ascension Bay," and Timbalier Bay, and to exclude Breton Sound altogether. La. Exh. 46. While Shalowitz says that the semicircle test was used in drawing the line (see La. Br. 241, fn. 251), it is evident that East Bay, as enclosed by it, has hardly two-thirds the area of a corresponding semicircle. The line obviously falls within the comment of W. R. Castle, writing for the Secretary of State on July 13, 1929, that "Agencies of the Federal Government have made their own determination for administrative purposes," but that no general determination of inland waters, binding on the Government as a whole, had been made. 1 Hackworth, *Digest of International Law* (1940) 644–645. See U.S. Br. 38.

Finally, Louisiana points out that under Article 5 of the Convention on the Continental Shelf, 15 U.S.T. (Pt. 1) 473–474, the United States could establish a safety zone of 500 meter radius around each offshore oil installation in East Bay, and says, "This is but another example of the authority of the government over the waters of East Bay." La. Br. 267. It is also another example of how far afield Louisiana's arguments range. The authority to establish safety zones has nothing to do with inland waters. Indeed, the Convention on the Continental Shelf, according to its terms, is applicable only to "the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea * * *." Article 1, 15 U.S.T. (Pt. 1) 473. We are content to rest on Louisiana's concession that the Convention is applicable to East Bay.

Louisiana also adduces, in support of its historic claim, certain actions by the State. La. Br. 242–250. Initially, we point out, as we did in *United States* v. *California,* that the establishment of historic title depends on an exercise of jurisdiction by the national government, not by individual States.

Our constitutional system gives all power over foreign relations and external affairs to the national government, to the exclusion of the States. This Court has so held from the earliest times. *E.g., Holmes* v. *Jennison,* 14 Pet. 540, 570; *United States* v. *Pink,* 315 U.S. 203, 233–234; *United States* v. *Belmont,* 301 U.S. 324, 331–332; *Chinese Exclusion Case,* 130 U.S. 581, 606; *Hines* v. *Davidowitz,* 312 U.S. 52, 63. The

establishment of maritime limits is a political matter in the field of foreign policy, and as such it is necessarily within the exclusive province of the federal government. As this Court held in *United States* v. *California*, 332 U.S. 19, 35, "whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge detracts from it, is a question for consideration among nations as such, and not their separate governmental units."

The extension of the maritime limits of the United States is equally beyond the power of a State, whether the action be viewed as the settlement of a boundary, *Lattimer* v. *Poteet*, 14 Pet. 4, 14, or as an acquisition of new territory, see Burdick, *Law of the American Constitution* (1922), p. 279; 1 Willoughby, *The Constitution of the United States* (2d ed.), pp. 407–425. Such powers are the exclusive prerogatives of the federal government, not by delegation from the States but by virtue of its status as a member of the family of nations. *United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304, 317–319; *Downes* v. *Bidwell*, 182 U.S. 244, 285 (Opinion of Brown, J.).

What a State cannot do directly, it cannot do by indirection. If State action in exercising sovereignty over these waters were to be held to establish an historic title to them, contrary to the policy and wishes of the federal government, the result would be just as disruptive to the course of national policy as if the State were permitted to act by legislation or to enter into foreign treaties on the subject. No doubt the

national government may, if it chooses, rely on State action to support its own historic claim as against other nations, but a State cannot oblige it to do so or to accept State action as binding in a domestic case such as the present one.

Quite apart from this, the actions cited by Louisiana have not been of such character as to sustain a claim of historic inland waters. Louisiana points to a general pattern of fishery and shrimping regulation going back to 1870 (La. Br. 242–244); but this was limited in terms to State waters, and the first specific reference to East Bay occurred in Act 51 of 1948. La. Br. 244. At that time, Louisiana claimed a territorial sea of 27 geographical miles, La. Act 55 of 1938. Since the total penetration of East Bay is only about 10 miles, the whole bay was within that territorial claim in any event, and the regulation of shrimping within it would not necessarily show an assertion of jurisdiction over it as inland waters.[29] No significance can be attached to the fact that it was classed as "inside waters" by the statute. The distinction between "inside" and "outside" waters, as established by that Act, had nothing to do with the definition of inland waters. The Act provided (sec. 1):

[29] *Cf. Juridical Regime of Historic Waters, Including Historic Bays* (1962), U.N. Doc. A/CN.4/143, p. 40:

"The activities carried on by the State in the area or, in other words, the authority continuously exercised by the State in the area must be commensurate to the claim. * * *"

That is to say, a claim of inland waters is not sustained by conduct that would be adequately explained by a claim only of territorial sea.

For the purposes of this act, the coastal waters of the State of Louisiana shall be divided into two (2) classes, to be known as inside waters and outside waters. The outside waters shall include that portion of the Gulf of Mexico within the boundaries of the State of Louisiana and that portion of the Gulf of Mexico east of the Mississippi River to South West Pass and between the "cut-off" at Rabbit Island, or the boundary between St. Mary and Iberia Parishes to the Sabine River, west of the Mississippi River of which the water is three (3) fathoms or more in depth. All other waters of the state within which the tide regularly rises and falls or into which salt water shrimp migrate shall be classed as inside waters. The inside waters shall include Chandeleur Sound, Breton Sound, Bastien Bay, Blind Bay, Garden Island Bay, East Bay, West Bay, Barataria Bay, Timbalier Bay, Terrebonne Bay, Caillou Bay, Atchafalaya Bay, East Cote Blanche Bay, West Cote Blanche Bay, Vermilion Bay and all other bays and sounds along the Louisiana coast, and the waters of the Gulf of Mexico east of the Mississippi River to South West Pass, and between the "cut-off" at Rabbit Island or the boundary between St. Mary and Iberia Parishes to Sabine River west of the Mississippi River of which the water is less than three (3) fathoms in depth.

It is at least arguable that even in East Bay and other named bays and sounds, the "inside" waters were limited by that language to those within the three fathom line, which in East Bay is always within three miles of the shore. See U.S. C. & G.S.

Chart No. 1272. In any event, it is clear that the classification had nothing to do with juridical status. *Cf.* La. Act 386 of 1948, sec. 5, La. Rev. Stats. 56:355, dealing with commercial fishing:

> For the purpose of this Sub-part, the waters of the state are divided into two classes: inland waters and coastal waters. The inland waters include all waters in which there is no regular ebb and flow of the tide. The coastal waters include all waters within which the tide regularly ebbs and flows.

It may be noted, also, that the 1948 definitions of "inside" and "outside" waters were amended by La. Act 92 of 1956, sec. 1, La. Act 53 of 1958, sec. 3,[30] and La. Act 452 of 1962, sec. 1, so that "inside" and "outside" waters are now separated by a line, delineated on a map attached to the statute, which is almost entirely identical to the coast line proposed by the United States in the present case, except that it follows the shore within East Bay and all the other bays of the Delta, and closes Breton Sound substantially as did the original Chapman Line. La. Rev. Stats. (1967 Pocket Part) 56:495.

Louisiana relies on the fact that from 1950 to 1961 there were over 200 arrests for shrimping violations "in the waters of the Delta area" (La. Br. 244); but we are not told whether any of them were more than three miles from shore or in East Bay or any other

[30] The 1958 amendment eliminated all enumeration of specific bays, and provided simply that "outside" waters were all State waters more than three miles from the "Continental coast line," or seaward of the shore in Cameron Parish, while "inside" waters were all other State waters where the tide regularly rises and falls or salt water shrimp migrate.

controverted area. Without such specification, the figure would be meaningless in any event.

Louisiana also relies on the fact that there has been "voluntary compliance" with State pollution laws by offshore operators in East Bay. La. Br. 245. This likewise fails to demonstrate any exercise in inland waters jurisdiction by the State, let alone the United States.

Louisiana also points, without giving any specific facts, to her regulation of geophysical surveying in East Bay since some unspecified time "in the 1940's" (La. Br. 246–247). Until this Court's decision herein of May 31, 1960, 363 U.S. 1, all such activity in East Bay could have been equally referable to Louisiana's claims of a 27-mile or 9-mile territorial sea; and as Louisiana herself points out, since 1954 compliance with the State regulations has been required by the Secretary of the Interior, in the exercise of his discretion, even on the federal outer continental shelf. 19 Fed. Reg. 1730. This sort of control by the United States since 1945 represents only the exercise of its jurisdiction over the continental shelf under Presidential Proclamation No. 2667 of September 28, 1945, 59 Stat. 884, the Outer Continental Shelf Lands Act of August 7, 1953, 67 Stat. 462, 43 U.S.C. 1331–1343, and the Convention on the Continental Shelf of April 29, 1958, 15 U.S.T. (Pt. 1) 471. It does not amount to an exercise of sovereignty over the superjacent water.

Louisiana also relies on the fact that in 1947 the State issued mineral leases on submerged lands in East Bay more than three miles from shore. La. Br.

247–248. That was precisely the sort of action by the State that led to the filing of our first suit against it in 1948, of which the present suit is essentially a continuation.[31] Conduct so promptly challenged can hardly be relied on to defeat the challenge. In effect, Louisiana asserts that the first party to issue a lease thereby established its right to continue to issue leases. However, it cites no authority to support such a proposition, and we know of none.

Louisiana's extended discussion of the geographical development of East Bay (La. Br. 188–195) is wholly irrelevant. To quote Boggs, *Delimitation of Seaward Areas Under National Jurisdiction* (1951), 45 American Journal of International Law 240, 253–254:

> Recalling that there are established rules relating to gradual or sudden changes of river courses (accretion or avulsion) in boundary matters, the supposed option of citing the geological past, when it appears to serve one's purpose, in order to advance seawardly the

[31] In the first case, the Court held the United States entitled to all the submerged lands and resources seaward of the low-water line and outer limit of inland waters of Louisiana, and enjoined the State from interfering therewith. *United States* v. *Louisiana*, 339 U.S. 699 and 340 U.S. 899. Before we sought a supplemental decree to identify the low-water line and outer limit of inland waters, the Submerged Lands Act was passed, giving the coastal States the submerged lands within three miles or, in some cases, up to three leagues, from that baseline. 67 Stat. 29, 43 U.S.C. 1301–1315. The Court then declined to let us proceed in the same case, with appropriate amendment, to identify specifically the federal lands that survived that grant (as was later allowed in *United States* v. *California*, 375 U.S. 927), instead requiring us to file the present suit, in which all the Gulf States were eventually joined. 350 U.S. 812; 354 U.S. 515.

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base line in delimiting the territorial sea, seems to constitute an extraordinary type of special pleading.

Louisiana is wholly unjustified in its assumption that since a semicircle is half as deep as it is wide, the semicircle test is met by any area of which the same is true. La. Br. 188–194. The test is one of area, not of dimensions. Equally unjustified are repeated statements regarding the 10-mile rule for the width of bays, such as that it "was firmly established by 1885" (La. Br. 100), that it "was firmly entrenched in international law" in 1922 (La. Br. 192), and that it "maintained its international recognition" until 1958 (La. Br. 193). While it was followed by many nations during those periods, and by the United States at least after 1930,[32] the International Court of Justice held in the *Fisheries Case* (*United Kingdom* v. *Norway*), I.C.J. Reports (1951) 116, 131, that the 10-mile rule "has not acquired the authority of a general rule of international law." This Court reached the same conclusion in *United States* v. *California,* 381 U.S. 139, 164, when it said that on May 22, 1953, when the Submerged Lands Act was passed, "there was no international accord on any definition of inland waters * * *."

Louisiana advances various geographical, security, and economic reasons for thinking that the United

[32] Louisiana discusses various matters supposed to show adherence of the United States to the 10-mile rule at a much earlier time. La. Br. 99–106. We disagree with Louisiana's interpretation of the materials cited, but pass over the subject here as irrelevant to the issues.

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States ought to have claimed East Bay as inland waters (La. Br. 199–216); but the question is whether the United States did make such a claim, not whether it had reason to do so. Moreover, if the matter were relevant, it does not appear that the usual three-mile territorial belt, the additional nine-mile fisheries, sanitary, customs, and immigration zones, and control over the continental shelf do not adequately protect the interests of the United States at East Bay as well as elsewhere.

It must be concluded that Louisiana has failed to show any basis for holding East Bay to be historic inland waters of the United States.

Louisiana's contention that East Bay is inland waters under Article 13 of the Convention, as the mouth of a river, is equally unsound. That provision, that "If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks" (15 U.S.T. (Pt. 2) 1610), obviously refers to the flowing mouth, not to any coastal curvature between two mouths.[33]

[33] The corresponding word of the French text is "embouchure" (15 U.S.T. (Pt. 2) 1618), defined by the *Petit Larousse* (1967) p. 364 as "Entrée d'un fleuve dans la mer" (place where a river enters the sea). East Bay is not a place where the river enters the sea.

The commentary of the International Law Commission says that the substance of this article is taken from the corresponding article of the report on the 1930 Hague conference. *Report of the International Law Commission Covering the Work of Its Eighth Session, U.N. General Assembly, Official Records: Eleventh Session, Supplement No. 9* (A/3159) p. 18; 2 *Yearbook of the International Law Commission* (1956) 271–272. Article 20

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Equally unjustified is Louisiana's assertion that East Bay is part of the harbor of New Orleans. Treasury Department Circular No. 127 (July 13, 1895; La. Exh. 7), which Louisiana says "expressly designated the waters around the mouth of the Mississippi River as part of the 'Harbor of New Orleans'" (La. Br. 259), in fact clearly designated them as two separate places: "New Orleans Harbor *and* the Delta of the Mississippi" (emphasis added).

Louisiana also argues that even though East Bay as a whole fails to meet the semicircle test, a line should be drawn within it at the first point where that test can be met.[34] La. Br. 116, 263. She seeks to justify this step by analogy to the rule that within a bay over 24 miles wide, a line of that length shall be drawn within the bay. However, the analogy is

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of the 1930 report provided (*Acts of the Conference for the Codification of International Law, Meetings of the Committees*, vol. 3, *Minutes of the Second Committee: Territorial Waters* (L.N. Doc. No. C.351(b).M.145(b).1930.V), pp. 208–209):

"When a river flows into the sea without an estuary, the waters of the river constitute inland waters as far as a line drawn across the mouth following the general direction of the coast, whatever the width of the river. If the river flows into the sea through an estuary, the rules applicable to bays apply to the estuary."

It is clear that only the waters of the *river* were to be considered inland waters and enclosed by the closing line. The waters of East Bay are not waters of the river.

[34] We said at U.S. Br. 115 that we were unaware of any place in East Bay where a line could be drawn that would meet the semicircle test, seaward of the base points that we recognize. Louisiana is correct in pointing out that such a line can be drawn, seaward of our base points. However, we consider it an improper line, for the reasons discussed above.

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completely false. A "bay" is specifically defined by Article 7 of the Convention as a well-marked indentation containing landlocked waters and having an area at least as great as that of a semicircle drawn on its closing line. When a bay, as so defined, is over 24 miles wide, part of it may be enclosed by a 24-mile line within the bay. On the other hand, where the semicircle test is not met, there is no bay, no legally defined entity within which to move back; there is only open sea. The Convention does not permit closing off every part of the open sea that meets the semicircle test; it only permits closing off all or part of a well-marked indentation that contains landlocked waters and meets the semicircle test. The line that Louisiana would draw in East Bay does not close a well-marked indentation. There is not the slightest perceptible curvature of the shore at either terminus; certainly there are no identifiable headlands. Moreover, the waters behind the line are not landlocked, except in the separate western and northern parts (both of which are landward of our base points). There is absolutely no justification for Louisiana's apparent contention that the requirements of a bay may be met piecemeal: a well-marked indentation at one point, a semicircle equivalent at another, landlocked waters still elsewhere, so as to give the character of inland waters to the whole or any particular part.

2. Garden Island and Redfish Bays

Louisiana repeats (La. Br. 303, fn. 73b) its former assertion (La. Resp. and Opp. 34) that our treatment of these two bays as a single indentation is based on

our recognition of "coastal dynamics"—the progressive deterioration of the Old Balize Bayou which separates them. That is not true. We treat them as one indentation by analogy to the precedent of the Svaerholthavet, discussed in the *Fisheries Case* (*United Kingdom* v. *Norway*), I.C.J. Reports (1951), p. 116 at 141. U.S. Mot. 77. The mountainous rock peninsula there involved was not deteriorating, so far as appears. Our reference to the deterioration of the Old Balize Bayou was only supplementary to a conclusion already reached.

3. Southeast Pass to Main Pass

Our difference in this area is over Louisiana's use of offshore islets as "headlands of bays." As Louisiana so often points out, Article 7 of the Convention requires that the area of an indentation "is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points." When islands are used as the only natural entrance points, no such perimeter exists. The "submerged natural levee" to which Louisiana refers (La. Br. 179) has no low-water mark and no legal significance in delimiting inland waters. Louisiana's confusion on this subject is illustrated by its statement that "The United States does not recognize this indentation [Blind Bay] as inland waters except to the extent that it is encompassed by a line drawn three miles from the main land mass" (La. Br. 179). Actually, of course, no bay can be "encompassed" by a line three miles (or any other distance) offshore, though that is what Louisiana seeks to do.

The inland waters of Blind Bay are those encompassed by the low-water line and a closing line between the mainland headlands; the waters within three miles seaward are territorial, not inland waters. We did not specify the closing line of Blind Bay or other inland waters in this area, because the three-mile line, which is all that is of moment here, is controlled by islets farther seaward. U.S. Br. 118–119.

K. MAIN PASS TO SHIP ISLAND: CHANDELEUR AND BRETON SOUNDS

Louisiana says that the State and the United States agree that "Isle au Breton Bay" is a juridical bay, and disagree only as to where its closing line should be drawn. La. Br. 171–172, 176. That is not true. We recognize Breton Sound as inland waters, for the purposes of this case, and close it by a line from Main Pass to Breton Island. U.S. Br. 120–129. The area that Louisiana calls Isle au Breton Bay apparently lies entirely seaward of that line, as indicated by the fact that the area between that line and the closing line from Pass a Loutre to Grand Gosier Island, as described by Louisiana, approximates the area of 165,000 acres that Louisiana attributes to "Isle au Breton Bay." La. Br. 175, fn. 168; *cf.* La Br. 167–168. We do not recognize it as inland waters, for the reasons stated in U.S. Br. 126–129.

Louisiana originally said that it chose the northernmost point of Grand Gosier Island as the northern headland of "Isle au Breton Bay" because it was "the point at which the coast begins to turn in to form the indentation." La. Resp. and Op. 41. However, it is evident that there is no such turn at that point (see

La. Exh. 34), and Louisiana now concedes that the point was chosen "because it is the outermost point which is less than 24 miles from the southern base-point at North Pass." La. Br. 175. But it takes more than two points within 24 miles of each other to make a bay, and here the other essentials are lacking. There is no well-marked indentation, there are no land-locked waters, and there is most emphatically not the continuous low-water line to which Louisiana sometimes attributes such inviolability. Nothing that Louisiana says of this area overcomes the conclusive objections stated in our former discussion. U.S. Br. 126-129.

Louisiana says (La. Br. 167) that the Chapman Line "was not modified" in the area of Chandeleur and Breton Sounds by the United States' motion on which the supplemental decree of December 13, 1965, 382 U.S. 288, was entered. In a sense, of course, it is true that the Chapman Line, as such, was not modified; it is a specific line, described in the past, and is what it is. A modified line would not be the Chapman Line. However, at the entrance to Breton Sound, the Chapman Line, as the presumed baseline of Louisiana's three-mile belt, was replaced by the same direct line between Main Pass and Breton Island that we now propose. As a result, Louisiana was awarded an area extending three miles seaward of the new line. 382 U.S. 288, 292. Louisiana now stresses the fact that that area is a portion of "Isle au Breton Bay," and seems to imply that this was somehow a recognition of the status of that bay. It was nothing more

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than a recognition that the area awarded had at least the status of territorial sea, being within three miles of the line closing the inland waters of Breton Sound. It had no relationship whatsoever to "Isle au Breton Bay" as a legal or geographical entity.

Louisiana refers to the fact that we continue to adhere to our former concession that Chandeleur and Breton Sounds are inland waters, and somehow makes of this a reversal of our former position. La. Br. 168. We find no reversal of position in standing by a concession that we made, even though the Court has now held inapplicable the principles on which it was premised. As we observed before, we would see much justification for asking, in the circumstances, to be relieved of the concession.

Louisiana charges us with inconsistency in arguing that the Convention is now the sole criterion of inland waters, yet refusing to apply the provisions of Article 4 of the Convention. La. Br. 168–169. Article 4 is optional. *United States* v. *California,* 381 U.S. 139, 167–169. The fact that the United States has not elected to take advantage of it is in no way inconsistent with the view that inland waters, under the Submerged Lands Act, are only those that are recognized as such under the Convention.

Louisiana also asserts that our failure to draw straight baselines under Article 4 or to recognize inland waters other than those recognized by the Convention leaves "a complete void." La. Br. 169. There is no void, except in the sense that there is no basis for giving the status of inland waters to the areas

that Louisiana seeks. The simple fact is that they are not inland waters under the Convention or under the Submerged Lands Act, and Louisiana's claim to them must fail.

III. THE DECREE SHOULD INCLUDE, WITH MINOR MODIFICATIONS, THE INCIDENTAL PROVISIONS SUBMITTED BY THE UNITED STATES

Since Louisiana's brief contains no discussion of this subject, no reply is needed.

CONCLUSION

For the reasons stated herein and in our opening brief, the Court should enter the supplemental decree proposed by the United States, with the modifications indicated in our opening brief, and should reject the proposed decrees submitted by the State of Louisiana.

Respectfully submitted.

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